

1 UNITED STATES BANKRUPTCY COURT

2 SOUTHERN DISTRICT OF NEW YORK

3 Case No. 08-13555-scc

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5 In the Matter of:

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7 LEHMAN BROTHERS HOLDINGS INC.,

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9 Debtor.

10 - - - - - x

11

12 U.S. Bankruptcy Court

13 One Bowling Green

14 New York, NY 10004

15

16 February 1, 2017

17 1:04 PM

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21 B E F O R E :

22 HON SHELLEY C. CHAPMAN

23 U.S. BANKRUPTCY JUDGE

24

25 ECRO: RACHEL

1     Hearing re: Trial on Lehman's Objection to Claims of QVT  
2     (Doc # 17468 Debtors' One Hundred Fifty-Fifth Omnibus  
3     Objection to Claims)

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25     Transcribed by: Sonya Ledanski Hyde

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1 NICK BRUMM - QVT - WITNESS

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3 ALSO PRESENT TELEPHONICALLY:

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5 CHARLES WITTMANN-TODD

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1 P R O C E E D I N G S

2 THE COURT: All right, so we're going to get  
3 started. It's a little after 1:00. I would like to thank  
4 everybody for their patience. My apologies for the delayed  
5 start. This happens from time to time, as things develop  
6 during the course of the trial, and I do appreciate that  
7 it's expensive to have lawyers sitting around for a couple  
8 of hours, but it is what it is. So, thank you, and thank  
9 you for the non-lawyers who sat through this morning.

10 So, Mr. Brumm, I think we're ready for you again.  
11 You folks who are in the sun, you're welcome to shut the  
12 curtains if the sun is bothering you. You remain under  
13 oath, Mr. Brumm.

14 MR. BRUMM: Thank you, Your Honor. I recall that.

15 THE COURT: Okay.

16 DIRECT EXAMINATION OF NICK BRUMM

17 BY MR. REGAN:

18 Q Mr. Brumm, yesterday you testified that on September  
19 15th, 2008, QVT decided to terminate its (indiscernible)  
20 agreements with Lehman. Do you recall that testimony?

21 A I do recall that testimony.

22 Q You also testified that, in connection with the market  
23 solicitation process, you reached out to counsel at some  
24 point in time. Do you recall that, as well?

25 A I do recall that.

1 Q Do you recall when the first point in time is that you  
2 reached out to counsel in connection with the market  
3 quotation solicitation?

4 A I recall reaching out to counsel on the evening of  
5 September 14th, 2008.

6 Q And which counsel is that?

7 A I reached out to Mr. Dan Cunningham of Allen and Overy.

8 Q And which -- I'm sorry, what -- you answered that.  
9 Never mind. Do you know what time you reached out to Mr.  
10 Cunningham?

11 A I reached out to him by email at -- in the evening.

12 Q We provided you with a packet of documents that have  
13 been produced to Lehman, and hopefully the court has a copy  
14 as well.

15 THE COURT: I do not.

16 MR. REGAN: We have another copy. (indiscernible)  
17 Your Honor, one second?

18 THE COURT: Sure.

19 MS. SAWYER: I just wanted to understand what's  
20 been handed up.

21 THE COURT: Yeah, let's -- for the record, let's  
22 make sure that...

23 MR. REGAN: We have handed -- we have provided to  
24 Lehman and to the court a series of Exhibits marked 2112  
25 through 2128. These are documents that are within the scope

1 of the court's recent privilege ruling. They have been  
2 redacted in part and provided to the witness, to Lehman's  
3 counsel, and to the court.

4 THE COURT: Okay, Miss Sawyer, did you want to go  
5 through these, one-by-one, to make sure that we all have the  
6 same set, or are you willing to accept the representation?

7 MS. SAWYER: Yeah, I mean, I think I'm willing to  
8 accept the representation that each of those exhibits was in  
9 the set that was handed up to the court. I think if we come  
10 across an issue, we'll realize it, I think, quickly.

11 THE COURT: Okay. All right, thank you.

12 Q Mr. Brumm, if you could, turn to Exhibit 2112 in the  
13 packet that you have.

14 A Yes, (indiscernible).

15 Q Do you recognize Exhibit 2112?

16 A I do.

17 Q What is it?

18 A It's an email that I sent to Dan Cunningham of Allen  
19 and Overy on Sunday, September 14th, 2008, at 7:18:51 p.m.

20 Q And did you speak with Mr. Cunningham on Sunday  
21 evening, September 14th?

22 A I did not speak with him.

23 Q Do you know if Mr. Cunningham responded to your email?

24 A He did respond to my email. He gave me a number on  
25 which to call him, but I was not able to reach him that

1 evening.

2 Q If I can direct your attention to the second document  
3 in your packet, Exhibit 2112. What is that email?

4 MS. SAWYER: My second document is --

5 MR. REGAN: I'm sorry. The first document is 2112  
6 -- 2113. Sorry, I made a wrong --

7 THE COURT: Hold on. Hold on. Yes, Ms. Sawyer?

8 MS. SAWYER: I was going to say my document is  
9 2113.

10 MR. REGAN: I just read it wrong; 2113.

11 THE COURT: Okay.

12 MS. SAWYER: Okay.

13 MR. REGAN: Sorry, I was saying the same thing.

14 Excuse me.

15 THE COURT: Uh-huh.

16 Q Mr. Brumm, do you recognize Exhibit 2113?

17 A I do.

18 Q What is it?

19 A It's an email from Mr. Cunningham to me on Sunday,  
20 September 14th, 2008, 7:25 p.m., responding to the email  
21 that I had earlier sent him, saying -- giving me a number on  
22 which I could call him that evening.

23 Q And did you attempt to call him that evening?

24 A I did attempt to call him that evening.

25 Q If you can, turn to the next Exhibit in your packet,

1 2114.

2 A Yes.

3 Q What is Exhibit 2114?

4 A Exhibit 2114 is an email from me to Dan Cunningham  
5 dated Monday, September 15th, 2008, at 8:05 a.m.

6 Q And did you send an email -- did you send this email to  
7 Mr. Cunningham on that day and at that time?

8 A I did.

9 Q And did you speak with Mr. Cunningham at that time?

10 A No, I spoke with Mr. Cunningham later that morning.

11 Q Do you know what time you spoke with Mr. Cunningham?

12 A I don't know what time I spoke with him. I just know  
13 it was later that morning.

14 Q Did you speak with Mr. Cunningham, or have email  
15 communication with Mr. Cunningham?

16 A I -- well, I -- both. I spoke with him later that  
17 morning.

18 Q And did you send -- exchange emails with Mr. Cunningham  
19 on September 15th?

20 A I did.

21 Q If you can, turn to Exhibit 2115 in your packet. What  
22 is Exhibit 2115?

23 A Exhibit 2115 is an email from me to Mr. Cunningham from  
24 Monday, September 15th, 2008, dated 10:54 a.m.

25 Q And what is the attachment?

1 A The attachment to the email is a draft request for  
2 market quotations to reference market makers.

3 MS. SAWYER: Your Honor?

4 THE COURT: Yes, Ms. Sawyer?

5 MS. SAWYER: Note my understanding of Exhibit 2115  
6 is the attachment is actually an Excel spreadsheet that's  
7 available in native form, as well, so I just wanted to make  
8 the record clear that we're all looking at a printout of  
9 something that's available natively.

10 MR. REGAN: (indiscernible).

11 THE COURT: Okay.

12 Q Did Mr. Cunningham respond to your email, that is,  
13 Exhibit 2115?

14 A He responded later in the day, yes.

15 Q Do you know what time Mr. Cunningham responded?

16 A It was after 3:00.

17 Q If you could, turn to Exhibit 2126 in your packet.

18 A 2116 or 21 --

19 Q 2126. I jumped ahead a bit.

20 A 2126, I'm sorry. Okay, I'm there.

21 Q What is Exhibit 2126?

22 A Exhibit 2126 is an email from Mr. Cunningham to me,  
23 from Monday, September 15th, 2008, at 3:11 p.m.

24 Q Is there one or more than one email in Exhibit 2126?

25 A There is more than one email. There are several emails

1 there. There is the email that I sent at 10:54 a.m. that  
2 was the prior exhibit, I believe, that we looked at. And  
3 then, there is another email in which I respond to Mr.  
4 Cunningham at 3:31 p.m.

5 Q What did Mr. Cunningham advise you in the 3:12 p.m.  
6 email, or 3:11 p.m., on the first page?

7 A The 3:11 p.m. email states looks okay, don't spend a  
8 lot of time on this.

9 Q What is that in reference to?

10 A It's in reference to the draft market quotation request  
11 that I sent to him at 10:54.

12 Q Did you reach out to any other counsel in connection  
13 with the market quotation (indiscernible) quotation on  
14 September 15th, 2008?

15 A I did.

16 Q Who was that?

17 A I reached out to Jeannette Boot at WilmerHale, also in  
18 the New York office.

19 Q What time did you reach out to Ms. Boot?

20 A Well I actually asked Mr. Metter, I believe, to reach  
21 out to Ms. Boot.

22 Q Do you know what time that was?

23 A It was in the morning, sometime after I sent Mr.  
24 Cunningham the draft market quotation request.

25 Q If you could, turn to Exhibit 2116 in your packet.

1 A Yes.

2 Q What is Exhibit 2116?

3 A Exhibit 2116 is a email from me to Adam Metter, dated  
4 September 15th, 2008, 12:27 p.m.

5 Q And what did you ask Mr. Metter to do in this email?

6 A Well, the subject line is please send to Jeannette.  
7 That was Jeannette Boot. And then I gave down below some  
8 language on -- from the market quotation request.

9 Q Who is Mr. Metter?

10 A Mr. Metter was a -- is a documentation specialist at --  
11 employed by QVT.

12 Q Do you know if Mr. Metter forwarded your request on to  
13 Ms. Boot?

14 A Yes, he did.

15 Q Do you know what time?

16 A It was shortly thereafter.

17 Q If you could, turn to Exhibit 2117 in your packet.  
18 What is that exhibit?

19 A Exhibit 2117 is a email from Mr. Metter to Ms. Boot  
20 from Monday, September 15th, 2008, at 12:28 p.m.

21 Q And does Mr. Metter in fact forward your language on to  
22 Ms. Boot?

23 A He does.

24 Q And do you know if Ms. Boot responded to Mr. Metter?

25 A She did.

1 Q Do you know what time?

2 A It was shortly thereafter; I think 20 minutes, a half  
3 hour later.

4 Q If you could, turn to exhibit 2118 in your packet.

5 A Yep.

6 Q What is Exhibit 2118?

7 A Exhibit 2118 is an email from Ms. Boot to Mr. Metter,  
8 dated September 15th, 2008, at 1:03 p.m.

9 Q And what information does Ms. Boot provide to Mr.  
10 Metter in Exhibit 2118?

11 A Ms. Boot provides some suggested language to Mr.  
12 Metter.

13 Q What is that language?

14 A The language states please provide market quotations as  
15 of 4:00 p.m. New York time on September 15, 2008, based on  
16 the actual (indiscernible) amounts and other relevant  
17 information provided to you in the attachment in respect to  
18 the transactions in writing by return email. Please  
19 maintain the confidentiality of this quotation request in  
20 all respects.

21 Q Did Mr. Metter pass Ms. Boot's language on to you?

22 A He did.

23 Q Do you know what time that was?

24 A I believe immediately.

25 Q If you could, turn to Exhibit 2119 in your packet.

1 A Yeah.

2 Q What is Exhibit 2119?

3 A Exhibit 2119 is an email from Adam Metter to me, dated  
4 Monday, September 15th, 2008, at 1:04 p.m.

5 Q And does Exhibit 2119 contain any other emails?

6 A Yes, it contains the email from Jeannette Boot --

7 Q I'm sorry --

8 A I'm sorry --

9 Q There appears to be a copying problem with 2119, so I'm  
10 going to strike that whole line of testimony relating to  
11 2119. The same document appears at 2120 in a more complete  
12 form. If you wouldn't mind turning to Exhibit 2120.

13 MS. SAWYER: Hold on.

14 THE COURT: Let's slow down. Let's --

15 MS. SAWYER: So --

16 THE COURT: Go ahead.

17 MS. SAWYER: I just want to make -- I wasn't clear  
18 exactly what -- what we were doing.

19 MR. REGAN: 2119 and 2120 are duplicates, but 2119  
20 appears to be cut off, so I would like to use 2120.

21 THE COURT: All right, let's give -- you want a  
22 moment to look at -- compare the two?

23 MS. SAWYER: I think I've got it. Okay, I'm  
24 following.

25 THE COURT: Okay, go ahead.

1 Q Sorry, Mr. Brumm. What is Exhibit 2120?

2 A Exhibit 2120 is an email from Adam Metter to me, dated  
3 Monday, September 15th, 2008, at 1:04 p.m.

4 Q And are there any other emails contained in Exhibit  
5 2120?

6 A Yes. Mr. Metter was forwarding to me the response that  
7 he had received from Ms. Boot, which is the email that we  
8 had looked at in the Exhibit 2118, I guess it is. And just  
9 before the -- it has the full email trail from when I asked  
10 him to send the draft language to Jeannette Boot.

11 Q Did you reach out to Ms. Boot at any other point in  
12 time on September 15th in connection with the market  
13 quotation solicitation?

14 A Yes.

15 Q Do you know what time that was?

16 A I don't know exactly what time it was, but around the  
17 time of these emails, I recall that Mr. Metter and I had a  
18 phone conversation with Ms. Boot.

19 Q And did you have any further email conversations, email  
20 communications with Ms. Boot?

21 A Yes.

22 Q Do you know what time those were?

23 A It was shortly after this; I would say within a half  
24 hour or so.

25 Q If you could, turn to Exhibit 2122 in your packet.

1 A Okay. Yes.

2 Q What is Exhibit 2122?

3 A Exhibit 2122 is an email from me to Ms. Boot, copying  
4 Mr. Metter, dated Monday, September 15th, 2008, at 1:24 p.m.

5 Q And is there one or more than one email in Exhibit  
6 2122?

7 A There are additional emails. I believe these emails  
8 are the ones we just looked at. There's the 1:04 p.m. one  
9 from Adam Metter to me, forwarding Jeannette's 1:04 p.m.  
10 email.

11 Q Is there an attachment to the top email in Exhibit  
12 2122?

13 A There is an attachment to it.

14 Q Is the last page of Exhibit 2122 that attachment?

15 A I believe it is.

16 Q Did Ms. Boot respond to your email that is at the top  
17 of Exhibit 2122?

18 A She did respond to my email.

19 Q Do you know what time Ms. Boot responded to your email?

20 A Very shortly thereafter.

21 Q If you could, turn to Exhibit 2123 in your packet.

22 A Okay.

23 Q What is Exhibit 2123?

24 A Exhibit 2123 is an email from Ms. Boot to me, copying  
25 Adam Metter, dated Monday, September 15th, 2008, at 1:35

1 p.m.

2 Q And is that top email on Exhibit 2123 a response to the  
3 email below?

4 A Yes, I believe it is. It's a response to the  
5 attachment that I had sent her; prior email that we looked  
6 at, where I'd asked her to review that.

7 Q What was Ms. Boot's response?

8 A Ms. Boot's response was looks good.

9 Q Internally at QVT, what other steps did you take in  
10 preparing the market quotation solicitations?

11 A Well, we drafted the language for the market quotation  
12 solicitation. And then in addition, there was a second work  
13 stream that was really my partner, Joe Lowman, was the  
14 compiling of the master list of positions that we would be  
15 seeing market quotation on. And then the division of that  
16 master list into three separate lists, based on the type of  
17 CDS that it was. We divided it into a corporate index  
18 request list, a EBS request list, and an emerging markets  
19 request list, because those would be going to different  
20 trading desks at the dealers.

21 Q And how long did Mr. Lowman's work stream take?

22 A I think it took him the better part of the morning from  
23 whenever he started, and certainly into the afternoon. It  
24 was complete sometime, I believe, between 2:00 and 3:00.

25 Q And how long did it take to complete your process of

1 preparing the market quotation language?

2 A Around the same time. I believe that the language was  
3 substantially final shortly after I received this looks-good  
4 message from Ms. Boot.

5 Q If you could, turn to Exhibit 54 in your binder.

6 A Okay. (indiscernible) 54?

7 Q Yes.

8 A Yes, I'm there.

9 Q Do you recognize Exhibit 54?

10 A I do.

11 Q What is it?

12 A It's an email from Joe Lowman to me, Dan Gold, and  
13 Arthur Chu, dated Monday, September 15th, 2008, at 11:28  
14 a.m.

15 Q And what information is Mr. Lowman providing to you,  
16 Mr. Gold, and Mr. Chu?

17 A Mr. Lowman is indicating that this is a -- what's he  
18 originally drafted and was thinking of circulating. It has  
19 some EBS-specific features, like fixed variable cap  
20 distinctions, and I break it out by type. But otherwise, I  
21 would think that corporates would fit into the same  
22 structure, probably broken out by IG, HY, LCDS index.

23 Q And there appears to be multiple messages on Exhibit  
24 54. What is the bottom message?

25 A The bottom message is a breakdown of positions between

1 different categories, a BWIC, a bid wanted in comp, a OWIC,  
2 an offer wanted in comp, and a IOWIC, interest-only, I  
3 believe, wanted in comp. And the positions have been broken  
4 down into those categories.

5 Q You explained what the BWIC and OWIC acronyms were, but  
6 can you tell us what they mean?

7 A Sure. A BWIC or an OWIC or a BWIC/OWIC is a form of  
8 solicitation of tradable levels. It's frequently done for  
9 both the purposes of trading, sometimes for purposes of  
10 marking, and -- but it's particularly done in the context of  
11 less-liquid securities because it's a way to try to indicate  
12 that you have a serious intention of trading the less that  
13 you put out, and thus, you're looking for people to put  
14 their best foot forward and give you actual levels. So it  
15 deals with the problem that if you just ask for quotes on  
16 liquid securities, you may get levels that are designed to  
17 shade the market very much whichever way the dealer would  
18 like to go, knowing that it's not really a trade situation.

19 Q What, if anything, does a BWIC or OWIC have to do with  
20 the market quotation solicitation?

21 MS. SAWYER: Objection, calls for speculation.

22 MR. REGAN: This is Mr. Lowman's September 15th,  
23 2008 email. He's using that language in a communication to  
24 Mr. Brumm, as he's in the process of --

25 THE COURT: The question is -- forget about the

1 document. The question is what is BWIC/OWIC have to do with  
2 market quotation, so Mr. Brumm can answer that, to the  
3 extent you have knowledge.

4 A Okay. So, market quotation, it was our understanding  
5 at the time that it requires you to seek actual, actionable  
6 levels. A BWIC/OWIC is also an indication that we're  
7 seeking actionable levels, so to that extent, they're  
8 similar. And the term BWIC/OWIC was much more familiar to  
9 dealers than the term market quotation was. Dealers do  
10 BWIC/OWICs all the time, across a wide variety of  
11 instruments. It's not limited to CDS. It's very prevalent  
12 in all types of bond trading, and we knew that was a term  
13 that dealers would understand. We didn't necessarily think  
14 that dealers don't very often get market quotation requests  
15 (indiscernible), so that's why we were using that language.

16 Q If you could, turn to Exhibit 2074 in your binder.

17 A Okay. I'm there.

18 Q What is Exhibit 2074?

19 A Exhibit 2074 is an email from Joe Lowman, dated Monday,  
20 September 15th, 2008, at 11:17, to me, Dan Gold, and Arthur  
21 Chu.

22 Q And what information is conveyed in Exhibit 2074?

23 A In Exhibit 2074, Mr. Lowman states for example -- this  
24 is an example of a list that is out there, which I believe  
25 is related to the request for tradable levels.

1 Q And what, if anything, does Exhibit 2074 have to do  
2 with the market quotation solicitation?

3 A So, Mr. Lowman was stating here that he believed that -  
4 - this list that had been put out that states at the top  
5 intraday, 2:30 p.m. ADS, CDS, BWIC, OWIC in the subject line  
6 of the email. Mr. Lowman was stating that he believes that  
7 this list of positions -- I think these are probably CDS,  
8 although I can't be certain looking at it, whether it  
9 relates to CDS or bonds, but I'm pretty sure it's CDS from  
10 the strike language -- that this is an example of a list  
11 that someone has out there. I think he must have meant it  
12 was related to CDS, because he say this is a list that is  
13 out there that someone is seeking essentially market  
14 quotation on.

15 MS. SAWYER: Your Honor, I move to strike that  
16 response as recounting hearsay from Mr. Lowman, who is going  
17 to be taking the stand.

18 MR. REGAN: I don't know if the whole response  
19 was. He said Mr. Lowman must have meant... Maybe from that  
20 point on.

21 MS. SAWYER: Well, then I think that would be  
22 speculation.

23 THE COURT: Well, then that would be speculation,  
24 so I think either way, we're going to have to hear from Mr.  
25 Lowman on this, and to that extent, we'll strike the

1 testimony.

2 Q Mr. Brumm, can you turn to Exhibit 2076?

3 A Sure.

4 Q What is Exhibit 2076?

5 A It's an email from me to Dan Gold, Arthur Chu, and Joe  
6 Lowman, dated Monday, September 15th, 2008, at 12:29.

7 Q And is there an attachment to Exhibit 2076?

8 A There is an attachment.

9 Q What information is conveyed in the attachment?

10 A This attachment is the draft market quotation language  
11 that I had prepared.

12 Q You drafted the attachment to Exhibit 2076?

13 A I believe I did, yes.

14 Q And in this draft, were you intending to request any  
15 particular type of quotation?

16 A Yes, I was proposing to request firm quotations.  
17 That's what the BWIC/OWIC language in the first line, where  
18 I said please provide levels for the following BWIC/OWIC,  
19 and stated -- and I think also, the language that you would  
20 pay us so we would pay you indicates that there's to be firm  
21 levels.

22 Q If you could, highlight the second Paragraph. In this  
23 draft, you appear to also offer some other alternative.

24 What is that alternative?

25 A Yes, that's correct. We offered the alternative of

1 providing a curve instead of an actual bid or offer  
2 expressed in dollars to the exact maturity date, and for the  
3 exact size that we had. So a curve, as I explained  
4 yesterday, would have been a indication to the 1, 3, 5, 7,  
5 and 10-year points of where they saw the market in a  
6 particular credit. We also asked as a -- for a recovery  
7 level, which is an assumption that goes into a CDS  
8 calculator, as to what the recovery value would be in a  
9 default. There are relatively market-standard recovery  
10 levels based on long-term averages, but individual credits,  
11 particularly in the emerging market context, may have  
12 recovery levels of their own. Flat or curve interpolation,  
13 that was, again, a setting in the standard CDS calculator  
14 that was available on Bloomberg that allowed you to turn a  
15 spread into a number of dollars payable in unwind value,  
16 payable either way. So you needed to have that, too.

17 So, essentially, if you had -- if you were  
18 provided the curve, the recovery level, and a statement as  
19 to whether it was a flat or curve interpolation, you were  
20 able, in the Bloomberg CDS calculator, to -- it would  
21 provide you a spread, because it would interpolate, which  
22 just means to calculate the spread between the three and the  
23 five year point, for example, if that's where you were --  
24 and it would spit out an unwind value, expressed in dollars,  
25 which is what we were asking for in the first paragraph.

1 So, it was a way of getting additional responses, if people  
2 were unwilling to provide the firm bidder offer that was  
3 requested in the first paragraph.

4 Q Did you -- did QVT include the option of providing a  
5 curve in the final market quotation solicitation that  
6 actually went out?

7 A We did.

8 Q Why did you do that?

9 A We did it because we wanted to maximize responses to  
10 our -- it's something that was present in our first draft,  
11 in fact, of it, or the first draft that is reflected in the  
12 documents here. And I think there, we actually stated that  
13 we understood that people might not be able to provide, for  
14 whatever reason, (indiscernible) bids and offers, and we  
15 wanted to get back as much information as we could.

16 Q If you could, turn to Exhibit 2075 in your binder.

17 A Okay.

18 Q What is Exhibit 2075?

19 A Exhibit 2075 is a email from Joe Lowman to me, Dan  
20 Gold, and Arthur Chu, dated Monday, September 15th, 2008, at  
21 12:34 p.m.

22 Q And is there another email contained in Exhibit 2075?

23 A Yes, there's the email that I had sent that had the  
24 attachment with the BWIC/OWIC language, or really, the  
25 market quotation language. Sorry, I'm reading the subject

1 line. It says BWIC/OWIC language.

2 Q And what information does Mr. Lowman convey in this  
3 email?

4 A Mr. Lowman states that the first paragraph looks good.  
5 The second paragraph makes sense for corporates, but doesn't  
6 apply for the ADS position, since there's really no concept  
7 of a curve there.

8 Q Do you recall receiving this email?

9 A I do.

10 Q Did you have any understanding as to what Mr. Lowman  
11 meant by that second sentence?

12 A Yes, I --

13 MS. SAWYER: Objection. I withdraw my objection.

14 Q Did you have any understanding as to what Mr. Lowman  
15 meant by this second sentence?

16 A Yes, I understood him to be saying that the concept of  
17 a curve didn't really apply for ADS positions because there  
18 wasn't typically -- there wasn't a curve to multiple --  
19 there weren't multiple maturity points that traded on these  
20 ADS.

21 Q If you could, turn to Exhibit 56 in your binder,  
22 please.

23 A Okay, 56?

24 Q I'm sorry, 55.

25 A 55, okay. Okay.

1 Q Do you recognize Exhibit 55?

2 A Sorry, I'll just take a minute to look at this. Yes, I  
3 recognize this.

4 Q What information is Mr. Lowman conveying to you in this  
5 email?

6 A Mr. Lowman is conveying that he made two changes to the  
7 language that I sent to him. One is that he inserted an in  
8 in offers wanted in comp, and two, that he had removed the  
9 language about currency, since these are all USD, meaning  
10 that they're all US-dollar denominated. Then he states I  
11 will send this out as-is. Formatting looks better in,  
12 Bloomberg is I believe what he means by BBG, unless there  
13 are other concerns.

14 Q Okay. Did you respond to Mr. Lowman's email?

15 A I believe I did.

16 Q Do you know what time you responded to Mr. Lowman's  
17 email?

18 A Very shortly thereafter.

19 Q If you could, turn to Exhibit 56 in your binder.

20 A Okay. This is an email from me to Dan Gold, Arthur  
21 Chu, and Joe Lowman, dated Monday, September 15th, 2008, at  
22 1:41 p.m.

23 Q And is there an attachment to Exhibit 56?

24 A There is an attachment to it.

25 Q What information is contained in the attachment?

1 A This is the market quotation language.

2 Q And, to your knowledge, is this the final version of  
3 the market quotation solicitation language?

4 A Yes, I believe it is.

5 Q And is Exhibit 56 your response to Mr. Lowman's email  
6 that we saw in Exhibit 55?

7 A Yes, it is.

8 Q What time did QVT start sending out market quotation  
9 solicitations?

10 A I believe QVT started sending out market requests --  
11 market quotation requests around 2:45 p.m.

12 Q And why did QVT start sending their requests at that  
13 time?

14 A That's when they were first prepared to be sent out,  
15 when the language had been attached to the spreadsheets that  
16 had been developed for the individual portions of the broken  
17 -- the universe of Lehman positions (indiscernible).

18 Q And did QVT in fact send out market quotation  
19 solicitations to reference market makers?

20 A We did.

21 Q Which reference market makers did QVT send their  
22 request to?

23 A So they were sent to different groups of reference  
24 market makers for the three different lists, based on the  
25 trading relationships that we had with those, those market

1 makers.

2 Q Did QVT send different categories of CDS to different  
3 reference market makers?

4 A Yes, there was a lot of overlap among the reference  
5 market makers selected, but it was to different desks, each  
6 list, at the different reference market makers. So it just  
7 depended who we had strong trading relationships with, who  
8 we thought would be best able to respond to these market  
9 quotation solicitations.

10 Q Do you recall who the reference market makers were? I  
11 know it's a long list.

12 A It's a long list, but I think I do. With respect to  
13 the corporate and index list, we sent it to Barclays, JP  
14 Morgan, Morgan Stanley, and UBS. And with respect to the  
15 emerging market list, we sent it to Deutsche, Morgan  
16 Stanley, JP Morgan, and UBS. So it was substantially the  
17 same, it's just it was Deutsche instead of Barclays for  
18 emerging market. And then, the ADS list was sent to a  
19 broader range. I don't know if I can remember all of them,  
20 but it did include Morgan Stanley, JP Morgan, Deutsche, I  
21 believe, Citi, RBS -- there may have been one or two  
22 additional.

23 Q How did QVT go about choosing which reference market  
24 makers to send CDS transactions to?

25 A We chose the reference market makers with whom we had

1 the most experience trading the products, and who we had the  
2 strongest relationships with, and who we thought we were  
3 most likely to get attention from and get responses from.

4 Q Did anyone at QVT communicate with the reference market  
5 makers before the market quotation requests were sent?

6 A Yes, I believe they did.

7 Q Did you personally have any such communications?

8 A I had communications, but I can't recall whether my  
9 communications were only with them after we'd sent them out,  
10 in the after hours, when it started to become clear we  
11 weren't going to necessarily get a ton of responses, because  
12 I recall at least one conversation like that. But I was  
13 aware that conversations were being had. I mean, it just --  
14 you wouldn't just send out a list like this to an email  
15 address and expect someone to respond in general, let alone  
16 on a day like September 15th. I recall people calling  
17 ahead.

18 Q Who at QVT would have made those calls?

19 A I think it would have been Joe Lowman, principally, and  
20 also Tom Knox, as they were the two who were sending out the  
21 market quotation solicitation requests, but it might have  
22 been other of the traders, too.

23 Q After the requests were sent out, did QVT and the  
24 reference market makers have any further correspondence, to  
25 your knowledge?

1 A Yes, there was further correspondence.

2 Q Were you personally involved in any of that further  
3 correspondence?

4 A I don't recall receiving any correspondence regarding  
5 it. As I stated a moment ago, I recall at least one  
6 conversation at some period substantially after hours, where  
7 one of our regular sales people told us that she didn't know  
8 if we would -- if they would be sending anything back. It  
9 was -- she said it's crazy here, you know, with a huge  
10 volume of requests. We're -- I don't know if we can send  
11 anything back.

12 Q Who else at QVT, to your knowledge, had conversations  
13 with reference market makers after the requests were sent?

14 A I don't recall which individuals had those, but I do  
15 recall that the conversation that I remember was consistent  
16 with other conversations that were being had.

17 MS. SAWYER: Objection. Move to strike. Lack of  
18 foundation as to how his conversation was consistent with  
19 other conversations that others had, when he can't even  
20 remember which individuals were making the phone calls.

21 THE COURT: All right, that's sustained.

22 Q Mr. Brumm, at the time the market quotation requests  
23 were sent, were you aware of any facts that led you to  
24 conclude that reference market makers might not fully  
25 respond to your requests?

1 A No.

2 Q Did QVT impose a deadline on responses to the market  
3 quotation requests?

4 A We did not impose any deadline.

5 Q If you could, turn back to Exhibit 56.

6 A Okay.

7 Q Which I believe you said contained the final market  
8 quotation language, is that correct?

9 A Yes, I believe this was the final market quotation  
10 language.

11 Q If I could direct your attention to the third  
12 paragraph --

13 A Yes.

14 Q -- the attachment?

15 A Yes.

16 Q Can you read that for the record, please?

17 A Please provide market quotations as of 4:00 p.m. New  
18 York time on September 15th, 2008, in writing by return  
19 email, based on the actual notional amounts and other  
20 relevant information set forth below in respect of each  
21 transaction.

22 Q Was that statement a deadline.

23 A I do not believe that statement was a deadline.

24 Q Why not?

25 A Because it states that it's as of 4:00 p.m. New York

1 time, and if you want to say by 4:00 p.m., you know, that's  
2 how you say it. It's very commonly said, particularly in a  
3 BWIC/OWIC context, that if there's a deadline, you state it  
4 so that people know. So...

5 Q Did QVT receive any responses to the market quotation  
6 requests before 4:00 p.m.?

7 A We received a couple of responses right around 4:00  
8 p.m., I believe a couple right before and a couple right  
9 after.

10 THE COURT: Can I ask one clarifying question?  
11 Probably about 10 minutes ago, you, in response to Mr.  
12 Regan's question, you explained what BWIC/OWIC is.

13 MR. BRUMM: Okay.

14 THE COURT: And you said, in sum and substance,  
15 it's shorthand for I really want to trade.

16 MR. BRUMM: Right.

17 THE COURT: Put your best--give me your best bid,  
18 right? So if that's what BWIC/OWIC is, then as a practical  
19 matter, when you're putting this out, when you did, and a  
20 dealer looks at it and says this is a request for BWIC/OWIC,  
21 it's as of 4:00 p.m., when 4:00 p.m. comes and goes, it's  
22 not a tradable quote anymore. So I'm trying to reconcile  
23 the testimony you just gave, that it's not a deadline --

24 MR. BRUMM: Yeah.

25 THE COURT: -- with your prior testimony that

1 here's -- everybody knew, all dealers, reference market  
2 makers, knew what BWIC/OWIC meant. Could you explain that?

3 MR. BRUMM: I will try to.

4 THE COURT: Okay.

5 MR. BRUMM: The -- so I think there are a whole  
6 range of BWIC/OWICs. I mentioned in particular that  
7 sometimes, they're just used to marking purposes.  
8 Sometimes, people say reserves apply. Sometimes, people say  
9 there's a deadline. And it's just, the reason we used that  
10 language, BWIC/OWIC at the top of this was, as I was trying  
11 to explain, that it's really much more intuitive to dealers  
12 than the term market quotation, which doesn't necessarily --  
13 in fact, the fact that you use the term quotation, which  
14 happens to be the defined term that we used here, that  
15 actually implies to a dealer a non-tradable level, if  
16 anything. So that's why we included the phrase BWIC/OWIC.

17 As of -- the fact that we stated as of 4:00 p.m.  
18 was simply because the ISDA requires you to request a market  
19 as of a certain time, and that's why we stated as of 4:00  
20 p.m. I think what we're -- we selected that because it's  
21 kind of the closing time, closing market, if you will, even  
22 though the OTC markets obviously don't have formal closing  
23 hours and continue to trade afterwards.

24 So what we were saying to people was please  
25 provide me your closing market on a firm basis, and indicate

1 if you want to trade there still, whenever you get it back  
2 to me. Because that was common in the OTC markets, as  
3 people might say okay, you know, this CDS closed at this  
4 level, and my dealer is act, meaning he still wants to  
5 trade. He has an offer on the other side if he's giving you  
6 an offer, or he has risk on his books that he wants to get  
7 rid of by selling to you. So what we were doing was saying  
8 provide me a closing market, and we want it to be firm, and  
9 we want it to be able to trade there. But the trade doesn't  
10 have to occur at 4:00 p.m. It's not an auction situation,  
11 the way many BWIC/OWICs are.

12 THE COURT: Thank you very much.

13 Q Mr. Brumm, who at QVT was responsible for actually  
14 sending out the market quotation solicitations?

15 A The market quotations were sent out primarily by Joe  
16 Lowman, who sent them out, I believe, for the corporate and  
17 index list, and also for the ADS list. Tom Knox, who was  
18 our primary emerging markets trader, sent out the emerging  
19 markets market quotation requests.

20 Q Was there anyone at QVT responsible for collecting the  
21 responses?

22 A Yes, that was Joe and Tom, as well.

23 Q And did QVT create a unique email address to collect  
24 those responses?

25 A We did create a unique email address, lehman@qvt.com.

1 It was -- you know, I think it was only used sporadically.  
2 In fact, a lot of the responses came directly back to Tom  
3 and Joe.

4 Q Mr. Brumm, do you have any ownership interest in QVT  
5 Fund?

6 A I do have an ownership interest in the QVT funds,  
7 including in QVT Fund LP.

8 Q Do you have any ownership interest in the Lehman claim  
9 at issue in this case?

10 A I do have an ownership interest in it. I think I  
11 testified yesterday that at the time, the insiders at QVT,  
12 the then-employees and partners, represented about 10  
13 percent of the capital of QVT Fund. And as a result, when  
14 we side-pocketed the Lehman claims, we received our pro rata  
15 share, so a similar type of level.

16 Q Has your ownership percentage in this claim changed  
17 over time?

18 A It has changed over time. It has increased, largely  
19 because my or our ownership interest overall in the QVT  
20 funds has increased. So the QVT funds, over the years,  
21 engaged in various transactions with their investors, and as  
22 part of that, the repurchased whole interests in the fund,  
23 of which these claims and the side pocket that those claims  
24 were contained in were a very small amount. So, as the -- I  
25 referenced, too, yesterday that the funds have grown smaller

1 over time. It's largely due to post-2008 losses; it's  
2 largely due to net investor redemptions, and the effect of  
3 that has been that today, the principals of QVT constitute a  
4 much greater percentage of the fund than they did in 2008.

5 So while the ownership was essentially frozen of  
6 the side pocketed that contained the Lehman claims, because  
7 the funds that we manage have over time purchased --  
8 repurchased at discounts to NAV various interests in the  
9 fund, this side-pocket claim is held by the main fund, of  
10 which we are a larger share. That's the principle way in  
11 which the insiders' holdings of this have increased.

12 Q If QVT's claim against Lehman is allowed in whole or in  
13 part, will you personally receive any of the proceeds?

14 A Yes, I will. I -- as I just said, I mean, I own some  
15 of this. I own it directly as someone who received it at  
16 the time that it was side-pocketed, and I own it indirectly  
17 through my ownership of a QVT main fund today.

18 Q Mr. Brumm, in Lehman's pre-hearing memorandum, on Page  
19 1 --

20 A Yes.

21 Q -- QVT -- Lehman wrote QVT's inflated claim is no  
22 accident. To your knowledge, did QVT take any steps to  
23 inflate its claim against Lehman?

24 A No, we did not take any steps to inflate our claim  
25 against Lehman. We simply (indiscernible) and the

1 replacement value of the various transactions that we lost  
2 when they were (indiscernible) on September 15th, 2008.

3 Q Also on page one of its pre-hearing brief, Lehman wrote  
4 QVT's traders followed through on Mr. Gold's directive. Are  
5 you aware of any directive that Mr. Gold issued in  
6 connection with QVT's claim against Lehman?

7 A No, Mr. Gold did not issue any directive in connection  
8 with QVT's claim versus Lehman. In fact, he was largely not  
9 involved in the valuation process, both because he lives in  
10 Westchester, whereas the rest of us were in the city who  
11 were working on it; because he -- we made the decision that  
12 he should focus on the portfolio 100 percent and not -- even  
13 on the weekends, not be spending time on, you know, what was  
14 a very line-by-line, detailed analysis, building up of a  
15 claim; and also, focus on communications with our investors,  
16 for which he'd always been kind of the lead managing member  
17 in contact with the investors.

18 Q What steps, if any, did QVT take to maximize its claim  
19 against Lehman?

20 A I don't think we took any steps to maximize our claim.  
21 As I said a moment ago, we were just trying to determine the  
22 replacement value of the transactions that we lost. We were  
23 just trying follow what the ISDA said, not having any  
24 experience of having done this. So we tried to run a market  
25 quotation process. When it largely failed, we tried to come

1 up with loss calculations, using the best available market  
2 data that we had in each case. There was quite a range of  
3 available information.

4 The less-liquid stuff, there was very little  
5 information on. In the middle, there was stuff where we had  
6 to exercise a fair amount of judgment as to what data out  
7 there, be it broker runs, responses to the market quotation  
8 requests that fell short of the requisite three responses  
9 for it to be an actual market quotation, and Markit data.  
10 And when we got into Markit data, what of the Markit data  
11 really -- which data that was presented for the 15th, the  
12 16th primarily, even the 17th in the cases of some of the  
13 illiquid positions, represented the best midmarket value --  
14 the real midmarket value that we could have transacted at on  
15 September 15th. And then we -- the further judgment as to  
16 what spread was appropriate, since we were only provided  
17 mid-data when we were looking at Markit markets.

18 Q Thank you, Mr. Brumm. I have no further questions, so  
19 pass the witness.

20 THE COURT: All right. Thank you.

21 MS. SAWYER: May I have just a few moments to  
22 organize my thoughts?

23 THE COURT: Sure. Can you -- do you think we  
24 should take a -- don't break my courtroom.

25 MR. REGAN: No one (indiscernible), right?

1 THE COURT: Should we take a five-minute break?

2 MS. SAWYER: That'd be great. Thanks, Your Honor.

3 THE COURT: All right, so let's take a five-minute  
4 break, and then we'll (indiscernible).

5 MR. REGAN: Thank you, Your Honor.

6 (Recess)

7 THE COURT: Okay.

8 MS. SAWYER: Your Honor, we have witness binders.

9 THE COURT: Okay.

10 MS. SAWYER: Which we have (indiscernible).

11 THE COURT: Will you be going back to the other  
12 binder, as well?

13 MS. SAWYER: I think a couple of times, but --

14 THE COURT: Okay.

15 MS. SAWYER: -- but hopefully, primarily my  
16 binder.

17 THE COURT: All right. Okay.

18 CROSS-EXAMINATION OF NICK BRUMM

19 BY MS. SAWYER:

20 Q Good afternoon, Mr. Brumm.

21 A Good afternoon, Ms. Sawyer.

22 Q In general, I wanted to just set some ground rules.

23 I'm probably going to refer to QVT and Quintessence

24 generally as QVT. But if you want to break up between the

25 two in any of your answers, please feel free to do so. And

1 if you think my questions need to be adjusted for the same  
2 reason, please let me know. I also probably will refer  
3 generally to Lehman, but if there are circumstances that we  
4 need to be more specific and refer to LBSF, please do so in  
5 your answers, and I'll try to do so in my questions, as  
6 well.

7 So with that, I wanted to start with some of your  
8 testimony yesterday about the QVT Fund's assets under  
9 management, and I believe that you testified yesterday that  
10 QVT had \$13 billion assets under management at the beginning  
11 of 2008?

12 A I think my testimony was that we peaked out at \$13  
13 billion at some point in 2008.

14 Q Okay. And now, QVT has about \$2.3 billion assets under  
15 management?

16 A That's correct.

17 Q And does that \$2.3 billion in assets under management  
18 include this claim?

19 A It does include this claim.

20 Q Okay, so this claim is more than 10 percent of QVTs  
21 assets under management currently?

22 A No, that's not correct.

23 Q Why is that not correct?

24 A So, assets under management refers to -- it's not your  
25 long and short positions, it's your net asset value. So

1 it's stated from the point of view of the investor, so  
2 that's one reason why it's not correct. It's also not  
3 correct in that we don't value this claim on -- for NAV  
4 purposes. We apply a mark to the \$265 million claim.  
5 That's essentially a quantity, if you will, of the claim  
6 that we have on our books, and we apply a mark to that,  
7 where we value it at a number that reflects (indiscernible).

8 Q And that marked level, that is included in your assets  
9 under management?

10 A Yes, it is included in -- it's included in -- it's an  
11 asset that leads to the NAV of the funds. I'm reluctant to  
12 say that it's included in our assets under management. It's  
13 a position for the funds we manage, but it feeds into it,  
14 but it's not itself a portion of the assets under  
15 management. The assets under management refers to the  
16 investors' interest in the funds.

17 Q I wanted to ask you some questions about the structure  
18 of kind of the QVT funds, and I don't want to go into too  
19 much detail about it. But QVT Financial LP is the  
20 investment manager for various QVT hedge funds, is that  
21 correct?

22 A That's correct, for various QVT funds.

23 Q And QVT Financial LP is an investment manager for the  
24 Quintessence Fund LP, correct?

25 A That's correct.

1 Q And QVT Financial LP earns monthly management fees for  
2 serving as the investment manager for both the QVT Fund LP  
3 and Quintessence Fund LP, correct?

4 A That is correct in a colloquial sense. So I discussed  
5 yesterday in my testimony, I believe, that there are a  
6 number of feeder funds. So actually, typically, the fees  
7 are taken at the feeder-fund level, because that's the level  
8 that the investors are at. So I discussed that the QVT  
9 funds have, in general, a master feeder structure, meaning  
10 that there are feeder funds that the investors invest in.  
11 There are a variety of feeder funds. Typically, there are  
12 more feeder funds than a master fund -- not in every case.  
13 In some cases, it's one to one. But that -- the fees, both  
14 the management fees and the incentive fees, are typically  
15 taken at the feeder level, because that's where the  
16 investors are. So it's one of the things that the third-  
17 party administrator does is to calculate those fees.

18 Q Okay, thank you. And those -- the management fees that  
19 are taken at the feeder-fund level, they amount to roughly 2  
20 percent of the NAV of the funds per year?

21 A It's actually somewhat less than 2 percent. Under the  
22 terms applicable to our funds, there are discounts that are  
23 given to larger investors, so it's somewhere between 1.5 and  
24 2 percent, I believe, on a blended basis, currently. And I  
25 should add further that that's with respect to the fee-

1 paying investors. The QVT employees, certain ex-QVT  
2 employees, they typically do not pay fees to the fund.

3 Q And then you'd mentioned that incentive fee that's also  
4 collected at the feeder-fund level, is that correct?

5 A That is typically collected at the feeder-fund level,  
6 yes. It's an incentive fee, or an incentive allocation,  
7 depending on the structure of the fund.

8 Q And that incentive fee is approximately 20 percent of  
9 any profits earned, once QVT is above its high water mark.  
10 Is that correct?

11 A Again, that's kind of colloquially correct. Those are  
12 typical hedge fund terms, but in our case, it's somewhat  
13 more complex in an investor-friendly way, which is to say  
14 that we have not just a high water mark, but also something  
15 called a hurdle. A hurdle is a minimum rate of return that  
16 the investor needs to earn before we receive fees. So on a  
17 net basis, net of our management fees and all the other  
18 expenses, the investor needs to make a certain amount of  
19 money each year before we're entitled to an incentive fee.  
20 And that level is actually a floating level, but it's based  
21 on LIBOR plus a fixed spread.

22 Q And what is that fixed spread for the incentive fees?

23 A Oh, I was afraid you were going to ask me that. It's  
24 actually a two-step. I believe there's a -- I haven't  
25 looked at this recently, but it's several hundred basis

1 points, several percent above LIBOR, and there are two  
2 steps. There's something called catch-up, which is a  
3 private equity concept where, once you're above the hurdle,  
4 you can catch all the way back up. So it would be as if you  
5 earned a 20 percent from the first dollar, as long as the  
6 investors received a high enough return.

7 So that's why I said, you know, you could say we're still,  
8 you know, receiving -- we can under certain circumstances  
9 still 20 a percent incentive fee or allocation.

10 Q And where would one go to look to understand what the  
11 percentage, the spread above LIBOR, is for the incentive?

12 A It's stated in our current offering memorandum.

13 Q And has QVT Financial LP earned any incentive fees to  
14 date on the performance of the Lehman side pocket?

15 A That is a -- that is a somewhat complicated question  
16 for the following reason. So for its direct management of  
17 the -- for its direct management of the fund, which is the  
18 QVT Combined Special Investment Fund, that holds the side  
19 pocket, I don't believe that it has. It's not -- the  
20 structure of that fund's incentive interest is not a typical  
21 hedge fund incentive fee or allocation, meaning that those  
22 funds are usually taken annually based on mark-to-market  
23 performance. The structure of that fund is more in the  
24 nature of a private equity fund, where there needs to be  
25 realizations effectively in order for an incentive fee to be

1 payable.

2           It's possible that due to the -- so, as I referenced  
3 just before we took the break in response to Mr. Regan's  
4 questions, the QVT main funds, which are subject to an  
5 annual mark-to-market calculation and recalculation, that  
6 any changes in the value of the Combined Special Investment  
7 Fund, which includes the Lehman side pocket and which  
8 includes the claims at issues in this case, you know, all --  
9 it's just -- it looks at its total P&L across all its  
10 assets. So in that sense, I guess, it's possible to the  
11 extent that P&L has been realized on these things, the  
12 claims at issue in this case, due to changes in the mark,  
13 you know, that has fed into the overall calculation. But  
14 there's been no, you know, incentive fee paid directly based  
15 on that.

16 Q       Just to make sure I understand your answer. So the  
17 extent that there was P&L recognized on the Lehman side  
18 pocket, then an incentive fee would have been paid on that  
19 realized P&L, correct?

20 A       I don't think that's what I said, and I apologize if I  
21 wasn't clear. I realize this is somewhat dense material.  
22 But it's -- what I just said a moment ago is that the Lehman  
23 side pocket, which is I think you're aware included things -  
24 - it included other Lehman claims, the ones that were  
25 settled over time with the other Lehman entities, some of

1 which were settled in the form of returns of securities, so  
2 that went into the side pocket, those securities, and they  
3 generated P&L over time depending on where they liquidated.

4 So that -- there's been no direct incentive fee payment  
5 based off of that, but that fund which holds it is itself an  
6 asset of the main funds. And whatever P&L has been realized  
7 there feeds into an overall P&L calculation where, you know,  
8 every line item in the QVT funds has suffered a loss at the  
9 end of the year, maybe or may non, maybe it's zero.

10 Q I think maybe I understand your distinction. So we'd  
11 look at the fund that holds the Lehman side pocket and see  
12 if there a P - a profit being earned in that. And then  
13 profit would be compared to the profit and losses of all the  
14 other funds to see if, overall, there's a profit and an  
15 incentive fee would be paid. Is that a fair assessment?

16 A I think that correct, yeah. And when you said  
17 compared, it's really being netted against. So, you know,  
18 every line item either generates a profits or loss in each  
19 year or a zero. So this QVT special investment fund, which  
20 is held in part by the QFT fund itself, has generated -- it  
21 has a bunch of different assets in it. There were a number  
22 of side pockets. They were all combined into this fund in  
23 2012 as part of a restructuring approved by our investors,  
24 and its NAV fluctuates. And based on that NAV and how --  
25 and also the market value of that fund because it can trade

1 at a discount to its NAV too, that can generate P&L at the  
2 main fund.

3 Q Do you know -- I'm sorry.

4 A But it's just one item among many; not a large item, a  
5 small item, in fact.

6 Q And do you know whether or not the fund that holds the  
7 Lehman side pocket has realized profits at any point since  
8 its creation?

9 A The fund that holds the Lehman side pocket has overall  
10 generated profits since its -- since it was created through  
11 the amalgamation of all side pockets. But I don't think any  
12 material around could be incentive fees ever received yet  
13 for that.

14 Q Do you know that?

15 A I don't know the details of that.

16 Q You talked quite a bit about --

17 THE COURT: Can I just aske one more follow-up  
18 question?

19 MS. SAWYER: Yes.

20 THE COURT: But if it's -- if, on a stand -- if  
21 the Lehman side pocket were the only asset, right, then on a  
22 standalone basis, you would -- I think you just told Ms.  
23 Sawyer that you believe there has been a profit up to this  
24 point.

25 MR. BRUMM: Absolutely.

1 THE COURT: Okay.

2 MR. BRUMM: Because the Lehman side pocket was  
3 created a value of zero. That means that no investor  
4 capital was taken out effectively.

5 THE COURT: I understand.

6 MR. BRUMM: Okay.

7 THE COURT: I understand. But then Ms. Sawyer was  
8 also asking you, to the extent that it contributes up into  
9 the overall P&L of the larger fund.

10 MR. BRUMM: Right.

11 THE COURT: Right? So the fact that it is a P  
12 instead of an L, right, has in some way contributed in a  
13 positive way.

14 MR. BRUMM: That's the point I was trying to get  
15 across.

16 THE COURT: Got it. Has contributed in a positive  
17 way to the calculation of whatever incentives may or may not  
18 have been paid in connection with the performance of the  
19 master fund.

20 MR. BRUMM: I believe so. I'd have to really go  
21 back and check the record.

22 THE COURT: But just as a mater --

23 MR. BRUMM: But I'm pretty sure yes, because it  
24 depends, of course, when the master fund bought it, what the  
25 mark was for the Lehman stuff there in general.

1 Particularly I'm using Lehman even more broadly than you are  
2 when I -- you know, I'm taking in LBIE, LBI, essentially  
3 because positive value has been recognized through those  
4 things over time. Yes, I believe it has.

5 THE COURT: Yes, okay.

6 MR. BRUMM: Or I don't have any of the details --

7 THE COURT: Thank you.

8 MR. BRUMM: -- which would be torturous obviously.

9 Q And when this matter gets resolved that's before the  
10 Court, that's going to be a positive value for the Lehman  
11 side pocket, correct?

12 A Depending on where it's resolved, yes, I expect it  
13 would.

14 Q But the claims were initially placed into the Lehman  
15 side pocket these claims at zero, correct?

16 A That's correct.

17 Q So anything more than zero would be positive value in  
18 connection with these claims, correct?

19 A That's correct. Although, I'm sorry, I took your prior  
20 question to mean positive from the current value because  
21 it's not currently valued at zero. It's valued higher than  
22 that.

23 Q So yesterday you spoke with Mr. Regan about the ISDA  
24 Master Agreement between LBSF and QVT and LBSF and  
25 Quintessence, and I'd like to look at some of those specific

1 provisions with you. So let's look at Joint Exhibit 1,  
2 which I believe my colleague gave you a binder.

3 A Yes, I have your binder.

4 Q Okay. I think do you also have Mr. Regan's binder?

5 A I have Mr. Regan's binder on the floor.

6 Q So let's -- Joint Exhibit 1 is in both.

7 A Okay.

8 Q But whichever --

9 A I'll use your binder until you ask me to use the other  
10 binder.

11 Q Perfect. So you testified, so Joint Exhibit 1's on.  
12 You testified yesterday that the parties had selected market  
13 quotation and second method in the schedule, right? It's on  
14 Page 20.

15 A Yes, I'm looking at F, payments on early termination.  
16 For purposes of Section 6 of this agreement, market  
17 quotation and the second method will apply.

18 Q And that's consistent with your understanding, that the  
19 parties had selected market quotation and second method in  
20 both their QVT ISDA and their Quintessence ISDA, correct?

21 A Yes, it is.

22 Q Okay. And looking at Page 20 of that Section F that  
23 you read, it continues to have a proviso. It says,  
24 provided, however, that with respect to credit-related  
25 products, loss will apply to all customized correlation

1 products (market quotation marked by CDX tranches), as well  
2 as any other transaction deemed to be a structure  
3 transaction in the confirmation related thereon -- do you  
4 see -- or thereto. Do you see that?

5 A I do see that.

6 Q Now QVT's not asserting in this case that it should be  
7 permitted to use a loss to value any of the transactions at  
8 issue based upon this proviso in Section 6F of the schedule,  
9 is it?

10 A That's correct, QVT is not asserting that.

11 Q So now let's look at the definition of market  
12 quotation, which is found on Page 15 of the ISDA.

13 A Okay.

14 Q And if you could just take a moment to read that  
15 provision to yourself, then I'll have a question for you.  
16 Have you finished reading the provision?

17 A Yes, I have. I was just looking at some sections that  
18 are average.

19 Q Does the -- now the market quotation definition does  
20 not refer to the non-defaulting party in any place, does it.

21 A I think it doesn't refer to the -- it doesn't use the  
22 term, non-defaulting party, but it does have a sentence  
23 where it talks about the fact that only one party may be  
24 making the determination, which I would take to be the non-  
25 defaulting party.

1 Q Right. In the, on Page 16, the sixth line down. It  
2 says, the party making the determination or its agent. Do  
3 you see that?

4 A I do see that.

5 Q And it doesn't say the non-defaulting party there, does  
6 it?

7 A No. But if you read the next sentence, I think it is,  
8 it says, the day and time as of which those quotations are  
9 to be obtained will be selected in good faith by the party  
10 obliged to make a determination under Section 6E, and if  
11 each party is so obliged after consultation with the other.

12 Q Right. It could be more than one party that would be  
13 obliged to make the determination, correct?

14 A It can be. My understanding is that those were under  
15 circumstances where each side is seeking market quotation.  
16 Where it's not an event of default situation; it's, there  
17 are other forms of termination. I think it's the illegality  
18 or the tax provisions.

19 Q We're going to look at some other provisions in the  
20 schedule with you.

21 A Sure.

22 Q You could turn to Page 25 of the document. It's the  
23 QVT Fund 166.

24 A Sure.

25 Q And there is a Section 5B that says additional

1 representations of Party B. Do you see that?

2 A I do see that.

3 Q And Party B refers to QVT; is that correct?

4 A To QVT Fund LP in this document, yes.

5 Q Right. And there's a number of additional  
6 representations that are made here. The first one is  
7 complex risks. It understands that the transactions  
8 contemplated hereunder are subject to complex risk which may  
9 arise without warning, may at times be volatile, and that  
10 losses may occur quickly and in unanticipated magnitude. Do  
11 you see that?

12 A I do see that.

13 Q And the next subsection is entitled, sophisticated  
14 investor. Do you see that?

15 A I see that.

16 Q And that continues and says, it is a sophisticated  
17 investor able to evaluate the terms, conditions, and risks  
18 of the transactions contemplated hereunder and accepts such  
19 terms, conditions, and risks. Did I read that correctly?

20 A I believe you did.

21 Q And the next additional representation of QVT is  
22 assumptions of risks. It is capable of assuming and assumes  
23 all risks, financial and otherwise associated with the  
24 transactions contemplated in their ISDA. Do you see that?

25 A I do see that.

1 Q And you signed the schedule on behalf of QVT, didn't  
2 you?

3 A I did.

4 Q And you were authorized to make those representations  
5 on behalf of QVT?

6 A I was.

7 Q And you also testified yesterday about the dispute  
8 resolution mechanism found in the credit support annex. Do  
9 you recall that?

10 A I do recall that.

11 Q And let's look at that provision, which I think is on  
12 Page -- QVT Fund 174. It's Paragraph 5, dispute resolution.  
13 Now, QVT and Lehman specifically elected that this dispute  
14 resolution would apply in their ISDA, didn't they?

15 A They did. It was standard.

16 Q And you testified that QVT never found itself in the  
17 position where it needed to invoke the dispute resolution  
18 provision under the CSA; is that correct?

19 MR. REGAN: Objection, mischaracterizes his  
20 testimony.

21 THE COURT: Could you repeat the question, Ms.  
22 Sawyer?

23 Q And you testified that QVT never found it a position  
24 where it needed to invoke the dispute resolution provision  
25 under the CSA, correct?

1 THE COURT: You can answer the question.

2 A I believe I testified that QVT never invoked the  
3 dispute resolution, or certainly not the -- what I think  
4 Lehman's characterized as the formal dispute resolution  
5 being the process under which their evaluation agent gets  
6 market quotations from multiple third-party dealers.

7 Q And QVT never invoked the dispute resolution provision  
8 because when it had disagreement with Lehman about margin,  
9 it was able to resolve those disagreements after discussions  
10 with Lehman, correct?

11 A I think that's only partially correct. We were  
12 sometimes able to resolve them and sometimes not.

13 Q So there were circumstances that you recall where  
14 Lehman and QVT had margin disputes that went unresolved?

15 A I think it depends on what you mean by resolved. There  
16 was, I testified, no circumstances where we utilized this  
17 procedure or the latter part of it. We effectively engaged  
18 in the consultation that's required as the first part of it.  
19 There were instances where -- I think there were instances  
20 where we weren't always happy with the resolution or, you  
21 know, not at specific points in time, but --

22 Q I'm not sure you answered my question.

23 A Sorry, let me try again.

24 Q So do you recall circumstances where you had disputes  
25 with Lehman about margin -- QVT had disputes with Lehman

1 about margin that remained unresolved?

2 A I recall instances where we were not happy with the  
3 marks that were being used for margin, and we tried to  
4 resolve that with the desk and it wasn't necessarily  
5 resolved right away. I don't know if, in every instance, it  
6 was resolved in the way that we were happy with with our  
7 marks. So that's what I took resolved, but we did not  
8 invoke this further procedure here.

9 Q The week before Lehman filed for bankruptcy, there  
10 weren't any disagreements between Lehman and QVT regarding  
11 margins to be posted, correct?

12 A I'm not aware of our contesting any marks that week.

13 Q Okay. And you testified on direct that any collateral  
14 posted between QVT and LBSF was post pursuant to the credit  
15 support annex, correct?

16 A That's correct, yes.

17 Q And if you could look at Paragraph 11D of the credit  
18 support annex, which is on Page 7 of the annex or QVT Fund  
19 178.

20 A I see that.

21 Q That provision provides good faith and in a  
22 commercially reasonable manner. It says, performance of all  
23 obligations under this annex, including, but not limited to,  
24 calculations, valuations, and determinations made by either  
25 party will be made in good faith and in a commercially

1 reasonable manner. Do you see that?

2 A I do see that.

3 Q And you understood that QVT had a duty to calculate its  
4 margin in good faith, correct?

5 A I did.

6 Q And you have no reason to believe that QVT breached  
7 this obligation to act in good faith and in a commercially  
8 reasonable manner in making its calculations under the  
9 credit support annex, do you?

10 A That's correct.

11 Q And you have no reason to believe that QVT was in  
12 breach of the credit support annex on September 15, 2008, do  
13 you?

14 A I don't -- I do not believe we were in breach.

15 Q And when QVT demanded margin from LBSF, QVT did so in a  
16 good faith and in using commercially reasonable  
17 calculations, didn't it?

18 A I believe that we did, yes.

19 Q So I want to talk about the Summer of 2008. By the  
20 Summer of 2008, QVT was carefully monitoring its exposure to  
21 Lehman, wasn't it?

22 A At a certain point in the summer, yes, we started to  
23 monitor our exposure to Lehman.

24 Q You did what?

25 A I'm sorry. At a certain point in the Summer of 2008,

1 we started to monitor our exposure to Lehman.

2 Q And you -- that included QVT's exposure to LBSF,  
3 correct?

4 A That included QVT's exposure to LBSF, correct.

5 Q And in assessing QVT's exposure to Lehman in relation  
6 to its derivatives transactions where Lehman as a  
7 counterparty, QVT would look at the market value of those  
8 derivatives, correct?

9 A That's correct. That was one of the daily margin  
10 process. We'd also look at the initial margin we had  
11 posted.

12 Q And you compare those two numbers. You'd look at what  
13 QVT has as its market value of its derivatives transactions  
14 versus the margin that was posted, correct?

15 A Yes. I mean, I think more technically, as I tried to  
16 explain yesterday, there was a daily process where Lehman  
17 sent a file to our operations area that contained its mark-  
18 to-market on all the open derivatives positions, and we  
19 would compare that with the mark-to-market that we had from  
20 our system.

21 Q I think you might not have heard my question.

22 A I'm sorry.

23 Q I was asking of, in terms of when QVT goes to assess  
24 its exposure in connection with its derivatives  
25 transactions, it looks at its market value on its books for

1 those derivatives transactions and compares it to the  
2 collateral its holding in connection with those  
3 transactions, right?

4 A That was one of the aspects. The other was initial  
5 margin.

6 Q Okay. And no one in the Summer of 2008 was raising  
7 concerns that QVT's market value of its derivatives were  
8 wrong when they were assessing its exposure to Lehman, were  
9 they?

10 A I don't recall anyone raising concerns that the market  
11 value of the derivatives was wrong in the Summer of 2008.

12 Q And no one at QVT in the Summer of 2008 indicated that  
13 they could not assess QVT's exposure to Lehman because QVT's  
14 market value of its derivatives on its books were erroneous,  
15 did they?

16 A No one said that they couldn't assess it because the  
17 market value was erroneous.

18 Q And as a managing member of QVT, if one of the traders  
19 had concerns about the accuracy of QVT's internal valuations  
20 of its derivatives positions, you'd expect that trader to  
21 speak up and let you know, wouldn't you?

22 A If a trader had concerns about the accuracy of the  
23 valuations that we have, I would expect them to speak up,  
24 yes.

25 Q So let's look at the -- let's talk about the week

1 before Lehman's bankruptcy. At QVT, the week before  
2 Lehman's bankruptcy, there were discussions and concerns  
3 about Lehman; is that fair?

4 A Yes, that is fair.

5 Q And QVT was concerned about the level of exposure that  
6 it had to Lehman, wasn't it?

7 A It was.

8 Q And as a result of that concern, QVT was trying to  
9 reduce its exposure to Lehman across its whole relationship  
10 with Lehman in a variety of ways, right?

11 A That's correct. And if I may just clarify in response  
12 to this question and also the last one. When we say Lehman,  
13 we're talking about more than LBSF. We're talking about a  
14 full range of Lehman relationships, particularly the prime  
15 brokerage and repo.

16 Q So let's -- fair clarification. I appreciate that. In  
17 connection with the LBSF derivatives transactions,  
18 specifically in relation to those, QVT took a couple of  
19 steps to try to reduce its exposure in connection with those  
20 transactions, right?

21 A That's correct.

22 Q And the main steps that QVT focused on that week were  
23 related to margin; is that fair?

24 A I think I, as I testified yesterday, one of the steps,  
25 and I believe it was during that week that we took it, was

1 to try to move derivatives positions away from Lehman in  
2 what's called novation, and is to speak where you get  
3 another party to step in. We were not very successful at  
4 doing that. There were not a lot of dealers that wanted to  
5 take on Lehman risk, so we couldn't transfer derivatives  
6 positions. So we focused more on margin.

7 Q And in focusing -- well, strike that. QVT wanted to  
8 ensure that it was holding sufficient margin in the case of  
9 a Lehman default, didn't it?

10 A Well, I think as I testified yesterday, we knew we  
11 couldn't possibly be holding sufficient margin in the case  
12 of a Lehman default because margin only partially protects  
13 you, particularly when you have a default of a major broker-  
14 dealer. I mean, yesterday, I discussed a number of factors.  
15 One is the fact that margin is done on a mid-mark basis;  
16 whereas, you know, you'll be -- obviously, when you look at  
17 replacement value, you're looking at it on your side of the  
18 market. That difference can be very substantial, obviously,  
19 for illiquid positions. It offers a spread that could be  
20 many points. And a further reason is you're only -- you're  
21 only protected to the extent that the marks are really good  
22 and representative of the way things are going. If your  
23 liquid things are not trading, are not absorbable, then you  
24 can't get mark-to-market margin on them. And lastly, and  
25 most importantly, is the sort of jump-to-default risk, which

1 is when a dealer -- when a major dealer files the way Lehman  
2 did, it's going to have a huge impact on the markets and on  
3 your positions. So I don't think that -- we wanted to have  
4 as much margin as we could, and as you pointed me to,  
5 calculated it in good faith and in a commercially reasonable  
6 manner. But we didn't have the right to just say to Lehman,  
7 give me more margin because I'm worried you're going to  
8 fail.

9 Q But you did, I think you just said, you wanted to --  
10 QVT wanted to hold as much margin as it possibly could in  
11 connection with the derivatives transactions with LBSF,  
12 correct?

13 A That's correct. We wanted to make sure that there was  
14 no amount of margin that we could call for that we were not  
15 calling for.

16 Q And one way, I think, based upon what you just said,  
17 that QVT could make sure it was holding enough margin was to  
18 make sure that QVT's marks were really good, right?

19 A Yes, but those marks had to be marks that Lehman agreed  
20 to. We couldn't just mark stuff on our own system and say,  
21 you know, hey, you know, like, I need more margin based on  
22 that.

23 Q But QVT believed that its marks were really good the  
24 week before Lehman's bankruptcy because it was trying to get  
25 as much margin as possible, right?

1 A Well, I think it's not -- I don't know that we believed  
2 our marks were really good or that I said that in my  
3 testimony. I mean, I think that it's not where you mark;  
4 it's where the dealer marks. The dealer is the valuation  
5 agent. The dealer provides the marks. You may mark for  
6 those same levels; you can mark to different levels. If  
7 you're marked at different levels, you can tell the dealer  
8 that you want them to post more margin. But we did not  
9 request additional margin based on changes in our marks.

10 Q You described the process of the margin between Lehman  
11 and QVT. That Lehman would send over their daily marks, QVT  
12 had their own marks, and there would be a comparison between  
13 those two marks to see whether margin could be called; is  
14 that correct?

15 A It's basically correct, but it's not quite correct in  
16 that what was sent over were actual market values for the  
17 positions. So meaning a mark had been applied already to  
18 the position, and our system would spit out the same thing.  
19 And, of course, our marks for many positions, they came from  
20 different sources. But often for positions, particularly  
21 some of the main positions at issue in this case, the PCDS  
22 and the CARB, those marks just came from Lehman.

23 Q And the --

24 A So we could have taken -- of course, we could always  
25 mark things differently in our system and generate a mark-

1 to-market, you know, in our favor, and then have our report  
2 spit out a mark-to-market that's much larger than the Lehman  
3 one, and then say, aha, there's a difference. Lehman, you  
4 know, I need you to post additional collateral. But nothing  
5 happens unless Lehman agrees to accept that mark-to-market  
6 value that we have created in our system by applying a  
7 different mark.

8 Q In the week before Lehman's bankruptcy, QVT didn't  
9 adjust its market value of its transactions to try to get  
10 any additional collateral out of Lehman based upon the  
11 remarking of those positions, did it?

12 A That's correct. We did not adjust our market values  
13 because doing so wouldn't have generated additional  
14 collateral from Lehman. It's only Lehman agreeing to that  
15 mark that would have generated additional collateral. It  
16 has to be changed in their system, not our system, in order  
17 for it to affect change.

18 Q And QVT never even asked Lehman, did it?

19 A I'm not aware of QVT asking Lehman to change marks that  
20 week.

21 Q But QVT was that week prior to bankruptcy promptly  
22 calling for any margin it could from Lehman, correct?

23 A That's correct.

24 Q And just maybe to give us a little bit of background.  
25 On September 11, 2008, QVT held approximately \$117.3 million

1 in margin from LBSF; is that correct?

2 A I don't know the exact number, but I believe that's  
3 approximately correct.

4 Q And there was also an independent amount or initial  
5 margin at QVT had posted to Lehman at the inception of the  
6 transactions, right?

7 A That's correct.

8 Q And that amount is about 18 to 18-1/2 million?

9 A For the QVT and Quintessence funds, I believe that's  
10 correct, combined. Yes.

11 Q Talking about the comparison of Lehman marks and the  
12 QVT marks. A Miss Fang at QVT was responsible in September  
13 of 2008 for doing the comparison between the Lehman market  
14 values -- you've corrected me -- and the QVT market values;  
15 is that correct?

16 A That's correct. She -- I think there may have been  
17 other people involved, but Miss Fang seems to have been the  
18 person in the operations area who was handling the Lehman  
19 margins at that point.

20 Q And Miss Fang took QVT's market values from its Tyche  
21 system to compare it to the Lehman valuations, correct?

22 A I think it came from a system called Mordor that -- but  
23 I believe that those values were fed out of the main Tyche  
24 system.

25 Q Another aspect of margin that QVT was focused on in the

1 week before bankruptcy was trying to get Lehman to waive  
2 that initial margin requirement, wasn't it?

3 A Yes, that's correct, we were.

4 Q And that would have the effect of requiring Lehman to  
5 post even more collateral to QVT if QVT had been successful  
6 in getting Lehman to agree to waive that initial margin  
7 requirement.

8 A That's correct. If they'd waived it, they would have  
9 transferred back to us approximately \$18 million of initial  
10 margin that they held.

11 Q And you don't dispute that QVT was required to post  
12 that initial margin under the terms of the CSA; is that  
13 correct?

14 A I do not dispute that it was required.

15 Q And so QVT was simply asking for an accommodation that  
16 it no longer be required to post that initial margin from  
17 Lehman, right?

18 A That's correct, and that was based on the fact that,  
19 you know, Lehman was troubled at the time. The rationale  
20 for initial margin is supposedly that a dealer is a rated  
21 entity, it's a much more solvent entity than end user, et  
22 cetera, et cetera. So we were saying to them, we don't  
23 really think that applies given where the markets trading  
24 your credit currently.

25 Q And prior to Lehman's bankruptcy, QVT didn't succeed in

1 getting Lehman to waive the initial requirement -- initial  
2 margin requirement, did it?

3 A Yes, I have to say I'm a little unclear on that. I  
4 never -- I heard they had made positive noises. I believed  
5 it might be coming, but there was no waiver document. I  
6 didn't have those discussions directly with Lehman, at least  
7 that I recall at all.

8 Q So you're not aware that Lehman ever agreed to waive  
9 the initial margin requirement prior to bankruptcy.

10 A I think I was -- it was unclear in my mind whether they  
11 had agreed to or whether they had said they might agree,  
12 whether they were going to do it, whether they were not  
13 going to do it. There was no clear agreement certainly.

14 Q I'd like you to look at Exhibit 5116 in your binder.  
15 Sorry about all the tabs.

16 A Okay, no problem.

17 Q This is an email from Julian Sale to Miss Kelly Fang,  
18 copying you, sent on September 11, 2008 at 8:53 AM with the  
19 re. line, LEH margin. Do you see that?

20 A I do see that.

21 Q And Mr. Sale is telling Miss Fang to prioritize any  
22 Lehman margin calls. Do you see that?

23 A I see that.

24 Q And she -- Mr. Sale also tells Miss Fang that if she  
25 has even the slightest concern, she should speak to Nick

1 straight away. Do you see that?

2 A I see that.

3 Q And that reference to Nick is a reference to you?

4 A Yes, I'm included on the cc and I'm also the only Nick  
5 at QVT.

6 Q So if Kelly had any questions or Miss Fang had any  
7 questions, she should speak to you, or concerns, correct?

8 A That's correct.

9 Q And Mr. Sale concludes, can you send us a note when you  
10 get the calls and when they are paid. Do you see that?

11 A I see that.

12 Q And so Mr. Sale's asking Miss Fang to provide updates  
13 when margin calls are paid by Lehman, correct?

14 A Yes, I think that's correct.

15 Q And this is an example of how QVT was focused on the  
16 margin calls to be made to Lehman on the week prior to  
17 bankruptcy, right?

18 A I think that's correct, yes.

19 Q Okay. If you could look at Joint Exhibit 47. Are you  
20 there, Mr. Brumm? Do you have that in front of you, Mr.  
21 Brumm?

22 A I'm sorry, yes, I do. I am at Joint Exhibit 47.

23 Q Okay. I can't see what you're looking at, so I want to  
24 make sure you're caught up with me.

25 A Of course.

1 Q All right.

2 A Of course.

3 Q This is an email chain from you to Kelly Fang, copying  
4 Mr. Sale this time, dated September 11, 2008.

5 A Sorry, when I said I was there, I meant I was at the  
6 page. I've not read it. May I just review it?

7 Q Yes, absolutely.

8 A I'll tell you when I'm ready to answer your question.

9 MR. REGAN: Objection. Lauri, I think, said  
10 September 11th.

11 THE COURT: I'm sorry, what's happening?

12 MS. SAWYER: I think I misspoke, which I'll  
13 correct when I ask the question.

14 THE COURT: Thank you.

15 A Okay, I'm ready.

16 Q This is an email from you to Miss Fang on September 12,  
17 2008 at 10:50 in the morning, copying Julian Sale. Do you  
18 see that?

19 A Yes, that's the top email you're referring to, I take  
20 it.

21 Q Yes. And if you look at the bottom email, it's from  
22 Mr. Sale to Miss Fang -- I'm sorry, from Miss Fang to Mr.  
23 Sale, where Miss Fang indicates the day to show, we can call  
24 LBSF today for plus 8.1 MMQVT and plus 870 take Quint. Do  
25 you see that?

1 A I see that.

2 Q And that would have been information that she would  
3 obtained -- have obtained from the Mordor system?

4 A I believe it is, yes. It's possible she'd already  
5 received something from Lehman too. I think it's -- the  
6 data isn't precise phrase.

7 Q But that's either -- it's either information coming out  
8 of QVT systems or it's based upon a comparison between QVT  
9 systems and Lehman systems, correct?

10 A That's what I would imagine it is, yes.

11 Q Okay. And you ask in response, does that reflect any  
12 decrease in initial margin. Do you see that?

13 A Correct. Yes, I do see that.

14 Q And so you're wondering if Miss Fang's calculations  
15 reflect any agreement from Lehman to decrease the amount of  
16 initial margin that QVT is required to post, right?

17 A That's right, that's right. And I think it -- well,  
18 your question was is if it reflects agreement from Lehman, I  
19 think, right? But it's possible that if the data were  
20 coming solely out of Mordor, it might just reflect our  
21 having already credited ourselves for a return of the  
22 initial margin in Mordor.

23 Q And she responds, moving up, that there's no change in  
24 IM. Do you see that?

25 A I see that.

1 Q Meaning that there's no change in the initial margin  
2 that QVT had posted to Lehman, right?

3 A Right, that's what I took it to mean, that the  
4 calculation of the data don't reflect any change.

5 Q And that was Friday, September 12th about 10:40 in the  
6 morning, right?

7 A 10:42, yes.

8 Q And so you responded, okay, please make the call right  
9 away, right?

10 A Correct.

11 Q Because QVT wanted to make all margin calls on Lehman  
12 as promptly as possible the week before Lehman's bankruptcy,  
13 right?

14 A That's correct. And I think if you don't make the call  
15 by a certain time in the day, you don't get paid that day.

16 Q And you want to make sure you got paid that day.

17 A I did.

18 Q If you could go to Exhibit 5114.

19 A Okay.

20 Q I'll give you a moment to look at it, and you can let  
21 me know when you're ready.

22 A Okay.

23 Q This is an email chain among Miss Fang, yourself, Mr.  
24 Sale, and Adam Metter on Thursday, September 11, 2008,  
25 correct?

1 A Yes.

2 Q And starting at the bottom of the email chain, Miss  
3 Fang writes, LBSF has called QVT for 710k today, and she  
4 continues and said, I heard Adam said you are trying to pull  
5 back some margin from them. Any update yet?

6 A I see that.

7 Q And is that a reference to the attempts to get back the  
8 initial margin from Lehman?

9 A I would say probably. It doesn't say initial margin,  
10 but that's probably what it was, unless there was some other  
11 accommodation that was being sought.

12 Q And Miss Fang follows up in the next email up the chain  
13 at 2:45 and asks if there's any update on this, should I pay  
14 the call or hold off. Do you see that?

15 A I see that.

16 Q And you write back, we are still waiting to hear,  
17 correct?

18 A Yes, that's an email from me to Kelly, Julian, and Adam  
19 Metter.

20 Q So you're still waiting to hear whether or not there's  
21 going to be some margin pullback from Lehman, right?

22 A That's what I would take it to mean, yes.

23 Q And Miss Fang at the top says, okay, I will hold the  
24 call. Do you see that?

25 A I see that.

1 Q And that means she's not going to pay the call at that  
2 time?

3 A That's what I would take it to mean, yes.

4 Q Okay. I'd like you to look at Exhibit 5464.

5 A I'm sorry, I didn't hear the number.

6 Q 5464.

7 A Okay.

8 Q This is an update to QVT's investors that QVT put out  
9 on Thursday, September 11, 2008 at 4:08 PM, isn't it?

10 A I believe it is, yes.

11 Q And these updates to the investors are sent out, at  
12 least in 2008, regularly to the investors, correct?

13 A They were sent out periodically; typically, at month --  
14 following the month end when we would establish an NAV. And  
15 I believe at the time, they might have been done in the  
16 middle of the month, too, typically.

17 Q And at this time in particular in September of 2008,  
18 they were coming out more frequently; is that fair?

19 A That is fair, at least in September for sure. I don't  
20 remember if there were -- and perhaps earlier in the year,  
21 there had been some kind of special investor updates, given  
22 how volatile the markets were.

23 Q And often those more frequent investor updates, like  
24 this one, were coming out in the middle of the month,  
25 correct?

1 A That's right. I'm sorry, what I was trying to say a  
2 moment ago in response to your question is that I believe we  
3 actually did midmonth estimates regularly in 2008. Indeed,  
4 today, we put out midmonth estimates and end-of-month  
5 estimates. I'm pretty sure we had that practice. But there  
6 were special estimates on top of this, so some a little  
7 earlier than midmonth. September 11th is obviously a little  
8 earlier than midmonth.

9 Q Would this have been the midmonth update or is this a  
10 special one that's being sent out?

11 A I don't recall.

12 Q Okay. Now, looking at the top of this, it has  
13 estimated returns of feeder funds. Do you see that?

14 A I do see that.

15 Q And it says that its estimated returns for the period  
16 September 1, 2008 to and including September 10, 2008. Do  
17 you see that?

18 A I do see that.

19 Q And these estimated returns, this would have been  
20 information generated from QVT's internal systems, the Tyche  
21 system, correct?

22 A That's correct, yes.

23 Q Okay. And at least as of September 11, 2008, QVT felt  
24 confident enough in their values in the Tyche system to  
25 generate a report that it sent to its investors about its

1 estimated returns, correct?

2 A That's correct.

3 Q And there's, after the estimated return section, then  
4 there's a comment section that says, comment on performance  
5 and market conditions. It's about halfway down the page and  
6 underlined. Do you see that?

7 A I see that.

8 Q And, generally, these investor updates include some  
9 commentary that would be provided to the investors; is that  
10 fair?

11 A Frequently, yes, I think that's right. I don't know  
12 about generally, particularly for midmonth estimates, but  
13 this one certainly does.

14 Q And typically, Mr. Gold would provide this commentary  
15 that would go into these types of communications, wouldn't  
16 he?

17 A That's correct.

18 Q And Mr. Gold's draft commentary would be circulated to  
19 the other managing members for their input and comment, so  
20 that there was agreement as to what was going out to the  
21 investors, right?

22 A That's correct. It was circulated more broadly than  
23 that even probably.

24 Q And if you could look at the paragraph that starts at  
25 the bottom of the first page of this investor update. It

1 says, as you know, Lehman Brothers stock has declined  
2 precipitously in recent days and is presently trading  
3 between approximately \$4.00 and \$5.00 a share. Do you see  
4 that?

5 A I see that.

6 Q Mr. Gold's updating QVT investors regarding a decline  
7 in Lehman's stock price?

8 A Yes, Mr. Gold is telling people where Lehman stock is  
9 presently trading.

10 Q And then he continues in that paragraph to talk about  
11 some of the efforts QVT is taking in connection with  
12 Lehman's decline, doesn't he?

13 A If you'll give me a moment to read it, I can answer  
14 your question.

15 Q Absolutely.

16 A I'm ready.

17 Q So in that paragraph that I believe you just read, Mr.  
18 Gold is talking about some of the efforts QVT's taking in  
19 connection with the Lehman decline; is that fair?

20 A Yes, in that paragraph in the (indiscernible).

21 Q And specifically in the third sentence, he says, we  
22 have moved some positions from Lehman to other  
23 counterparties and expect to move more today and tomorrow.  
24 Do you see that?

25 A I do see that.

1 Q And that's what you're referring to that QVT was trying  
2 to move certain of its positions away from Lehman, correct?

3 A That's correct.

4 Q And then continuing on, Mr. Gold indicates, at present,  
5 we believe that we retain enough Lehman CDS, such that  
6 should Lehman default, we would likely make more on the CDS  
7 than the loss of our initial margin, equity in repo, and  
8 equity in prime brokerage held with Lehman, although I would  
9 caution that this analysis is dependent on the completion of  
10 the transfers currently under way, and is based on our  
11 understanding of how certain of our accounts will be treated  
12 in the event of the bankruptcy of Lehman. Do you see that?

13 A I do see that.

14 Q So Mr. Gold is communicating that QVT had purchased  
15 enough CDS on Lehman to not only cover its risk, but  
16 actually make more in the event of a Lehman default than its  
17 exposure to Lehman, correct?

18 A Specifically, our loss of initial margin equity in repo  
19 and equity in prime brokerage. That's -- if that's your  
20 definition of exposure, yes.

21 Q And that QVT had purchased the CDS on Lehman that would  
22 cover that, correct?

23 A Yes.

24 Q Okay. And if you could turn to the second page of  
25 this, the second line. Mr. Gold identifies what he says as

1 a further potential risk of replacement risk. Do you see  
2 that?

3 A I do see that.

4 Q And that sentence is underlined, right?

5 A Yes, it is.

6 Q And Mr. Gold explains that this replacement risk would  
7 arise if Lehman collapses in such a way that all of its  
8 contracts under the ISDA, including CDS, terminate, right?

9 A That's what it says, yup.

10 Q And in that scenario, then the QVT funds and the rest  
11 of the very large universe of Lehman ISDA counterparties  
12 would suddenly be left with certain unhedged positions,  
13 right?

14 A That's what it states, yes.

15 Q And so according to Mr. Gold, the replacement risk is  
16 the risk that the spread for the new CDS contract to replace  
17 the old one will be higher than the level prevailing when  
18 the old CDS termination occurred, right?

19 A That's what it says, yes.

20 Q And that's what you understood the replacement risk  
21 that QVT was facing prior to Lehman's bankruptcy was, right?

22 A Well, I guess I would state it a little differently  
23 than it's stated here.

24 Q So that's not your understanding as to what the  
25 replacement risk is that QVT was facing prior to Lehman's

1 bankruptcy?

2 A Well, I guess I would say a couple things about how my  
3 understanding might differ certainly from the language that  
4 you've read. One is that replacement risk doesn't just  
5 arise with respect to CDS that are acting as hedges for when  
6 you suddenly have unhedged positions. I think replacement  
7 risk, as I think of it, is the -- it's the risk that when  
8 you go to replace whatever CDS are terminated, that the  
9 market is at a significantly different level from where it  
10 was when you last valued your CDS, and particularly when you  
11 last valued your last CDS for margin purposes versus that  
12 counterparty. So if -- that's what I've been referring to  
13 as jump-to-default risk, which is another common term for  
14 it, or replacement risk as it's defined here.

15 Q And that replacement risk arises from the movement  
16 between the time of the termination of the contract and the  
17 time of the replacement, correct?

18 A No, that's not correct.

19 Q But that's what Mr. Gold wrote in this investor update,  
20 correct?

21 A That's why I stated that I have a somewhat different  
22 understanding. I would define it as the move from the point  
23 that the business day before the insolvency of the  
24 counterparty occurs, herein before the insolvency of Lehman  
25 occurs.

1 Q That's not what was communicated to the investors on  
2 September 11th, though, was it?

3 A I mean, I find this phrase, when the old CDS  
4 termination occurred, vague, and I don't know exactly what  
5 it's trying to communicate. But I would say that  
6 replacement risk, as I understood it and as I believe Mr.  
7 Gold understood it at the time, is not the difference  
8 between where the CDS is on the day you terminated and some  
9 subsequent day. It's the difference between where the CDS  
10 was as of the close of business preceding the day that you  
11 terminated. That's what jump-to-default refers to  
12 obviously. That all of a sudden, because there's a default  
13 that there's a jump in values that you are not  
14 collateralized for.

15 Q But that's not the language that's used in this  
16 investor update.

17 A That is not the language that's used in this here.

18 Q And going to the next paragraph that starts, it is  
19 currently very difficult to novate. Do you see that?

20 A I see that.

21 Q That -- I'm sorry, I lost my train of thought. That  
22 sentence is referring to QVT's efforts to novate some of its  
23 CDS from Lehman to other investment banks; is that correct?

24 A That's correct.

25 Q And you'd mentioned that earlier in your testimony that

1 that was one of the steps that QVT was undertaking to try to  
2 reduce its exposure to LBSF, correct?

3 A That's one of the steps we tried to take, but as I  
4 remember, were either completely unsuccessful or largely  
5 unsuccessful.

6 Q And as noted in this update to the investors, they were  
7 -- you were finding it difficult to do; is that correct?

8 A Yes, I think difficult is probably an understatement.  
9 I think it was, as I recall, it was impossible. I don't  
10 recall maybe a couple of things got novated, but it was very  
11 small.

12 Q And as a result of the difficulty or impossibility to  
13 novate things, QVT was, in the words of this investor  
14 updated, forced to maintain our current level of replacement  
15 risk. Do you see that?

16 A I do see that.

17 Q And then Mr. Gold goes on to say, it's difficult to  
18 estimate how much that level of replacement risk might be,  
19 but it could amount to two to three percent of NAV. Do you  
20 see that?

21 A I see that.

22 MR. REGAN: Objection.

23 THE COURT: What's the objection?

24 MR. REGAN: Misreading the document or incomplete  
25 reading of the document.

1 THE COURT: Could you repeat, Miss Sawyer?

2 MS. SAWYER: It said, and Mr. Gold goes on to say  
3 it's difficult to estimate how much that level of  
4 replacement risk might be, but it could amount to two to  
5 three percent of NAV.

6 MR. REGAN: And the parenthetical.

7 THE COURT: Okay, go ahead.

8 MS. SAWYER: Though this is frankly only a guess.

9 THE COURT: And what's the question?

10 MS. SAWYER: My question is, is that what Mr. Gold  
11 said in this investor update on September 11, 2008.

12 THE COURT: You can answer, Mr. Brumm.

13 A Yes, that is what Mr. Gold said, including the  
14 parenthetical. Thank you for that.

15 Q And he was communicating that this replacement risk  
16 could be -- could amount to two to three percent of NAV,  
17 right?

18 A He says it could amount to two to three percent of NAV,  
19 though, frankly, that is -- this is only a guess.

20 Q Let's turn now to the weekend before Lehman's  
21 bankruptcy. QVT continued to focus on its potential  
22 exposure to Lehman even that weekend, right?

23 A We did.

24 Q And I believe you testified on direct that there were a  
25 number of conference calls on that weekend to discuss QVT's

1 exposure to Lehman, right?

2 A There were.

3 Q And, in fact, there was an analysis done on that  
4 weekend before Lehman's bankruptcy to assess what QVT's  
5 exposures were to Lehman, including Lehman's deriv -- QVT's  
6 derivatives exposure to Lehman, right?

7 A I believe I recall that certain analyses were done, but  
8 I don't recall the details.

9 Q If you could look at Exhibit 50 -- I'm sorry -- 5130.

10 A Okay.

11 Q I'm not sure what's in your binder, but there's two  
12 sheets of this. One is kind of cut off, the chart is cut  
13 off on the side.

14 A I see it.

15 Q So if you look at the second sheet, it shows everything  
16 and it's a portrait landscape.

17 MR. REGAN: Which page are you referring to?

18 MS. SAWYER: It says Page 1 again, it's the second  
19 page. It's the one that's oriented this direction, yes.

20 Q This is an email from Mr. Sale -- I'm sorry, the bottom  
21 email is an email from Mr. Sale to you, Mr. Gold, Mr. Chu,  
22 and Mr. Perez on Sunday, September 14, 2008. Do you see  
23 that?

24 A I do see that.

25 Q And Mr. Sale in September of 2008 was QVT's Chief

1 Financial Officer, wasn't he?

2 A He was.

3 Q And Mr. Perez was the Chief Risk Officer at QVT in  
4 September of 2008, right?

5 A He was.

6 Q And Mr. Sale is giving this update to you, Mr. Chu, Mr.  
7 Perez, and Mr. Gold about the positions with Lehman as of  
8 the close of business Friday, September 12th, right?

9 A If I may have a moment to review the document.

10 Q Yes, absolutely.

11 A I'll be able to answer your question then. Okay, I'm  
12 ready.

13 Q Okay. My question was to you, Mr. Sale is giving an  
14 update to you, Mr. Chu, Mr. Perez, and Mr. Gold regarding  
15 QVT's positions with Lehman as of the close of business  
16 Friday, September 12, 2008, right?

17 A Yes. He states, this is the trade date position as of  
18 close of business Friday.

19 Q And that's referring to September 12, 2008, right?

20 A It is. The phrase trade date means that based on  
21 trades that have been done, so if there are trades that are  
22 unsettled potentially.

23 Q And there's -- it's broken up by custodian, the chart  
24 is, and there's a row that says LBSF. It's the third row  
25 down. Do you see that?

1 A I see that.

2 Q And if you go across on that row, you see the value of  
3 the derivatives for LBSF as \$116,898 -- I'm sorry,  
4 \$116,898,602. Do you see that?

5 A I do see that.

6 Q And that's the value of QVT's -- the market value of  
7 QVT's derivatives transactions with LBSF as of the close of  
8 business on September 12, 2008, right?

9 A That's correct.

10 Q Based upon QVT's own systems, right?

11 A I imagine so, yes.

12 Q And then right below that, the next row says, LBSF  
13 margin. Do you see that?

14 A I do see that.

15 Q And going across, there's a number and some of the cash  
16 balance column that's a minus 117 million approximately. Do  
17 you see that?

18 A I see that.

19 Q And that's the amount of collateral QVT held from LBSF  
20 as of the close of business on Friday, September 12, 2008,  
21 right?

22 A I believe that's correct.

23 Q So according to this analysis from Mr. Sale, QVT held  
24 more collateral from LBSF than the market of the derivatives  
25 trades with LBSF on QVT's books as of the close of business

1 September 12th, right?

2 A Yes, by approximately \$306,000.

3 Q And you don't remember anybody objecting on Sunday,  
4 September 14, 2008 to Mr. Sale's analysis to point out that  
5 the market value of the derivatives transactions were  
6 incorrect, do you?

7 A I don't recall anyone pointing out that the market  
8 value of the derivatives transactions as of the close of  
9 business on Friday was incorrect.

10 Q And it would have been important for QVT to know the  
11 weekend before Lehman's bankruptcy if QVT's market valuation  
12 of its derivatives trades with LBSF were not accurate,  
13 wouldn't it?

14 A Yes, it would be important to know that.

15 Q And I believe you testified on direct that QVT would  
16 sometimes remark its books when a significant intermonth  
17 event happened. Do you recall that?

18 A I do recall that.

19 Q And I believe you also testified that the Fannie and  
20 Freddie event earlier in September of 2008 was a significant  
21 event for the markets; is that fair?

22 A I do recall that, yes.

23 Q And did QVT take steps after that significant event of  
24 the Fannie/Freddie situation to remark its books?

25 A We did remark at least certain positions. I don't

1 recall whether we remarked the whole book at some point.

2 It's possible that we did in order to generate the kind of  
3 investor updates that you pointed me to earlier this  
4 afternoon.

5 Q And now, Fannie and Freddie, those are both GSE's,  
6 government-sponsored enterprises, right?

7 A That's what they were commonly referred to as that.

8 Q And Lehman was not a GSE, was it?

9 A Lehman was not a GSE.

10 Q And QVT only had, you know, one or maybe a few PCDS  
11 trades that referenced Fannie or Freddie, didn't it?

12 A I don't recall us having PCDS trades that referenced  
13 Fannie and Freddie, at least in September of 2008.

14 MS. SAWYER: I could use a quick minute.

15 THE COURT: I think everybody probably could, so  
16 let's shoot for 3:30 to resume. All right?

17 [BREAK]

18 THE COURT: Come back up, please.

19 Q You were involved in the decision to elect to terminate  
20 the transactions on September 15, 2008, weren't you?

21 A That's correct, yes. I was involved in the early  
22 termination decision.

23 Q And I believe you testified on direct that it was a  
24 joint decision of the managing members to terminate the  
25 transactions on September 15, 2008, right?

1 A I did, yes.

2 Q And QVT understood that it had the right, but not the  
3 obligation, to terminate the ISDA Master Agreements  
4 following LBHI's bankruptcy, correct?

5 A We did understand that it was a right, not an  
6 obligation.

7 Q And I'd like to look at Joint Exhibit 67.

8 A Okay.

9 Q Which is the termination notice that Mr. Regan showed  
10 you. It should be towards the front.

11 A Yeah, I'm sorry, I'm just getting there. I see -- 67,  
12 you said, right?

13 Q Yeah, 67.

14 A Okay, sorry. Yes, I'm there.

15 Q And that's the termination notice signed by you and Mr.  
16 Brumm -- I'm sorry, you and Mr. Gold, correct?

17 A That's correct, yes.

18 Q And it specifically states the early termination date  
19 shall be September 15, 2008.

20 A Yes, it does state that.

21 Q And QVT understood that QVT had the ability under the  
22 ISDA Master Agreements to designate the early termination  
23 date, correct?

24 A Correct.

25 Q And even though QVT terminated it on September 15,

1 2008, it didn't need to designate September 15, 2008 as the  
2 early termination date, correct?

3 A That's correct. I believe we have to designate a date  
4 within 20 days of the date on which we delivered the notice.

5 Q And it was a joint decision of the managing members to  
6 designate the early termination date as September 15, 2008,  
7 correct?

8 A It was a joint decision, yes.

9 Q And QVT understood that certain obligations arose in  
10 connection with the designation of an early termination  
11 date, right?

12 A We did understand that certain obligations arose, yes.

13 Q And QVT understood that it was required to value the  
14 transactions as of the early termination date, or if that  
15 was not reasonable practicable, as soon as reasonably  
16 practicable thereafter, correct?

17 A Yes, that's correct.

18 Q And you don't recall any discussions at QVT on  
19 September 15, 2008 about the practicability of valuing the  
20 terminated transactions as of September 15, 2008, do you?

21 A I do not recall any discussion of the practicability of  
22 it.

23 Q And you don't recall any discussions at QVT that if QVT  
24 terminated the transactions as of September 15, 2008 and the  
25 portfolio deteriorated on the 16th or the 17th or the 18th,

1 that QVT might be unable to capture that deterioration, do  
2 you?

3 A No, I do not recall any such discussions.

4 Q So QVT, going back to the ISDA, QVT requested that the  
5 market quotation measure be included in the ISDA Master  
6 Agreements, correct?

7 A QVT did request that the market quotation measure be  
8 included in the ISDA Master Agreement between us and Lehman,  
9 yes.

10 Q And QVT sought the market quotation method because it  
11 believed it was the most even-handed fairest form of  
12 closeout under the ISDA Master Agreements, right?

13 A That's correct. We thought it was the most even-handed  
14 fairest method of closeout. And as an end user, we were  
15 particularly concerned that it be the most even-handed,  
16 fairest measure because I think when ISDAs were negotiated,  
17 really, you know, right up until the financial crisis,  
18 people didn't imagine that dealers would actually default.  
19 They imagined that they would be the ones being closed out.  
20 But by people, I mean end users, excuse me.

21 Q And if you could look at Joint Exhibit 4.

22 A Okay. Yes, I need my glasses.

23 Q Yes, it's a very poor copy. This is a 2005 email  
24 exchange between QVT and Lehman related to the negotiation  
25 of the ISDA Master Agreement, correct?

1 A Yes. If I can just take a moment to review it.

2 Q Yes.

3 A Thank you, I'm ready.

4 Q This is a 2005 email exchange between QVT and Lehman  
5 related to the negotiation of the ISDA Master Agreement  
6 between QVT and LBSF, correct?

7 A That's correct. It also copies some of our then  
8 derivatives counsel.

9 Q And you're copied on the emails, correct?

10 A I'm copied on a number of emails publicly, it looks  
11 like, or certainly a number, I guess.

12 Q And it appears --

13 A I'm copied just on the latter ones. There are some  
14 earlier ones where Adam Metter, I believe, is the QVT  
15 person.

16 Q So you're copied on some of the ones on the first page.

17 A That's correct, yes. I see my name there.

18 Q And Mr. -- it appears that Mr. Metter appears to be  
19 negotiating with Lehman on behalf of QVT in connection with  
20 this; is that fair?

21 A That's correct, that was Mr. Metter's role at the time.

22 Q And I believe you testified he was an ISDA  
23 documentation specialist that worked for QVT?

24 A That's correct.

25 Q And if you look at the email that starts at the bottom

1 of the first page, which is from Mr. Metter to Renelda  
2 (indiscernible).

3 A Okay.

4 Q At 9:36. Do you see that?

5 A February 28, 9:36. Yes, I see that.

6 Q And --

7 A I'm sorry, February 8th. I'm sorry, I thought I saw a  
8 2 there.

9 Q It's February '08, I think.

10 A Right, I think you're correct. Thank you.

11 Q Mr. Metter writes at the bottom of this first page, we  
12 had a discussion this morning re market quotation loss. We  
13 continue to feel market quotation is the proper method for  
14 valuing our positions. Do you see that?

15 A I do see that.

16 Q And when Mr. Metter refers to we, he's referring to  
17 QVT, right?

18 A Yes.

19 Q And so was that true in 2005 when Mr. Metter was  
20 negotiating with Lehman that QVT felt that market quotation  
21 is the proper method for valuing its positions?

22 A I believe it was. I mean, it's certainly what he  
23 stated.

24 Q And he continues to say, most of our positions have a  
25 ready market with easily obtained quotations. Do you see

1 that?

2 A I do see that.

3 Q And that was true in 2005 when Mr. Metter was  
4 negotiating with Lehman, that most of QVT's positions have a  
5 ready market with easily obtained quotations, right?

6 A I don't know what our positions were in 2005 with  
7 Lehman, but it is what's stated here.

8 Q And you don't know whether or not that's true in 2005,  
9 whether QVT's positions had a ready market with easily  
10 obtained quotations?

11 A It was after discussion with others, including Arthur  
12 Chu and myself, so I assume we believed that was correct in  
13 2005. I'm just saying I don't know what those positions  
14 were in 2005.

15 Q Now, Mr. Metter goes on to discuss customized products,  
16 and states, we feel these become more common every day and  
17 liquid quotation mechanisms will develop. Do you see that?

18 A I do see that.

19 Q And was that true in 2005 when Mr. Metter was  
20 negotiating with Lehman, that QVT felt that these were  
21 becoming more common every day and liquid quotations  
22 mechanisms would develop?

23 A He does state that and it was after discussions, so I  
24 think we did believe that. I think that it was a period of  
25 time when there was tremendous development in the CDS

1 markets, and things that were one day a new product were  
2 shortly thereafter much more widely traded.

3 Q And I believe you testified on direct that QVT believed  
4 that the market quotations obtained needed to be actionable;  
5 is that fair?

6 A For market quotation, yes, we believe that they needed  
7 to be actionable, that's correct.

8 Q And prior to Lehman's bankruptcy, QVT discussed  
9 internally the procedure for valuing QVT's portfolio of  
10 trades in the event Lehman went bankrupt, didn't it?

11 A There was some discussion. I recall an email trail  
12 about how market quotation would work and/or loss and what  
13 the requirements for those were.

14 Q And you, I think you might refer to Joint Exhibit 46  
15 that Mr. Regan showed you yesterday.

16 A I should -- I'll turn to that.

17 Q Yes.

18 A Yes, this was what I was referring to. Thank you.

19 Q And if you go to Page 3 of this document, it starts  
20 with an email from Arthur Chu on Monday, September 8, 2008.

21 Do you see where I'm at?

22 A I do see that.

23 Q And he is posing the question to Mr. Metter and Mr.  
24 Sale. "Suppose that Lehman were to file, what is the  
25 procedure for valuing a CDS?." Do you see that?

1 A I do see that.

2 Q Mr. Chu is raising this question in the context of a  
3 potential Lehman filing, right?

4 A That's correct, yes.

5 Q And then Mr. Regan, I think, focused on the top email  
6 on the email chain, so the one on Page 1.

7 A Okay.

8 Q And that's where Mr. Metter's telling you that he told  
9 Mr. Chu that the quotations should be actionable in  
10 accordance with the market quotation definition. Do you see  
11 that?

12 A Yes, I do see that.

13 Q And that's consistent with your understanding that the  
14 quotations obtained for the market quotation process needed  
15 to be the levels at which dealers would actually enter into  
16 replacement trades, right?

17 A Yes, that's correct.

18 Q And you testified, I believe, on direct that QBT did  
19 not start preparing for the market quotation process until  
20 September 15, 2008, is that correct?

21 A I did, yes.

22 Q But that's not true, is it?

23 A I beg your pardon?

24 Q If you could look at Joint Exhibit 51, which might not  
25 be in your binder because I think it's a native file.

1 But...

2 A I don't think I have it.

3 Q No, it's a native file.

4 A (indiscernible)

5 Q Have you seen this document before? It's a  
6 spreadsheet.

7 A I don't know whether I have or not.

8 Q Well, let's look at the tab that says, Quote Market  
9 Request.

10 A Okay.

11 Q Do you see that?

12 A I do.

13 Q And have you seen this language before? This Quote  
14 Market Request? Dear XXX, we require firm tradable offers.  
15 Do you see that?

16 A I do see this and I have seen this letter before.

17 Q And that's an initial draft of the instructions to go  
18 along with the market quotation process, right?

19 A It is.

20 Q And if you could go over to the tab called Exposures,  
21 do you recognize what this is?

22 A I don't recognize what it is. I believe it's...

23 Q It has a list of different things like Argentina, GMAC  
24 Hedge, things like that.

25 A Yeah.

1 Q It's Column C, it's got LBSF and DC. Do you see that?

2 A I do see that.

3 Q And do you know that this is a list of the LBSF trades?

4 A I don't know what it is. I would think that's actually  
5 an account list on the side. The accounts are things that  
6 we stick positions in. The accounts are the...level or the  
7 concept in which we place individual positions to keep them  
8 grouped. So, I can tell from looking at these and  
9 recognizing some of these that these were account names in  
10 our system. In the accounts would have been one or more  
11 positions, what we called a ty-fy, Tyche. And I know that  
12 they're written in a different way, so these are not full  
13 positions themselves. I think this is some sort of exposure  
14 -- it's some sort of exposure analysis by account.

15 Q Could you go down to Row 669? Or 666? So here we're  
16 starting to get into what you were saying, the ty-fys.

17 A That's correct.

18 Q They're showing up at Column B.

19 A Yes, that's correct. In Column B, those are ty-fys.

20 Q Right. And so those -- like looking at Row 666, it  
21 says GMAC Hedge in Column A...

22 A That's the account that this position resided in.

23 Q Okay. And then Column B it says Auto-BBB-Bespoke\_DS1.!  
24 Do you see that?

25 A Yes, I do. That was the name for CARB in our system.

1 Q And so this sheet listed the accounts at the top and  
2 then continued to go down and list certain individual  
3 trades, correct?

4 A Yes, exactly. It listed positions, we would call them.

5 Q Okay. And going back to the tab marked Quote Market  
6 Request...

7 A Yeah?

8 Q Do you know who drafted this language?

9 A I believe this language was drafted by Mr. Gold and me  
10 together on September 15th.

11 Q I'd like to look at the metadata for this document.

12 A Okay.

13 Q That's not the same one. Do we have hand documents...?  
14 There we go.

15 THE COURT: Is this in the binder, Ms. Sawyer?

16 MS. SAWYER: It is not in the binder. I  
17 apologize.

18 THE COURT: It is not. Okay.

19 Q So, this is a metadata summary and if you go to the top  
20 section --

21 A I'm sorry, I can't read this at all.

22 Q I think he's going to blow it up for us.

23 A It's very -- it's just -- it's a very unclear image on  
24 my screen. Okay, I can read it well enough.

25 Q Sure.

1 A Some of it anyway. Yeah.

2 Q So now it says Metadata Information, and it says Author  
3 Arthur, do you see that?

4 A I do see that.

5 Q Do you know who that's a reference to?

6 A I believe that's a reference to Arthur Chu, because  
7 he's the only Arthur at QBT.

8 Q Okay. And if you could go down to the next section of  
9 the metadata about date-time information...

10 A Okay.

11 Q And here it says, Date Created. Do you see that?

12 A I see that.

13 Q And it says 9-14-2008. Do you see that?

14 A I see that.

15 Q And that's inconsistent with your memory as to when  
16 this document was created. Is that what your testimony is?

17 A It is inconsistent. I mean, I don't think the tab you  
18 were looking at was created on the 15th. I don't think that  
19 was something that Arthur drafted but...

20 Q But you don't dispute that Arthur created the  
21 spreadsheet on September 14, 2008?

22 A Arthur did create a spreadsheet on September 14, 2008.

23 Q And the spreadsheet is related to the market quotation  
24 process, correct?

25 A I don't know that it is related to the market quotation

1 process. I recall Mr. -- Arthur creating a spreadsheet over  
2 the weekend that was an analysis of our CDS positions,  
3 including certain positions that he wanted to prioritize for  
4 CD replacement trades mostly.

5 Q But the spreadsheet we looked at -- let's go back to  
6 the spreadsheet, Jax 51. The very first tab says, Quote  
7 Market Request, right?

8 A That's right. But, as I said, I don't believe that  
9 this is a tab that was created by Arthur. I remember this  
10 as language that Dan and I created and in particular I'll  
11 just say it has a style that is very much the way Dan writes  
12 and the way he indicates emphasis. And I remember this as  
13 something that we created on September 15th together.

14 Q So, I'd like you to look at Claimant's Exhibit 2115,  
15 which -- it's in the package that Mr. Regan handed to you.  
16 And I apologize for having you look a number of different  
17 places.

18 A No, that's fine.

19 Q Let me... Do you have it in front of you?

20 A I do.

21 Q Okay. And this is the email that Mr. Regan showed to  
22 you where you were sending a draft request for market  
23 quotations to Mr. Cunningham at 10:54 a.m. on September 15,  
24 2008. Do you see that?

25 THE COURT: What document number?

1 MS. SAWYER: It's in the package from --

2 THE COURT: Yeah, I have the package.

3 MS. SAWYER: And it's Claimant's Exhibit 2115.

4 THE COURT: Thank you.

5 A Yes, that's right. It was an attachment to the email  
6 that I sent to Mr. Cunningham at 10:54.

7 Q And that attachment --

8 A September 15th.

9 Q I'm sorry. I didn't mean to --

10 A I'm sorry, on September 15th.

11 Q Let's just make sure our record's clear. So, this is  
12 the email that you sent to Mr. Cunningham on September 15th  
13 at 10:54 a.m. with an attachment to it, correct?

14 A That's correct.

15 Q And let's look at that attachment, which looks just  
16 like the attachment we just looked at from Joint Exhibit 51.  
17 Correct?

18 A That's correct.

19 Q And it's got the language of the draft market quotation  
20 in a tab on the spreadsheet, do you see that?

21 A I do see that.

22 Q But all the other tabs from that spreadsheet from Joint  
23 Exhibit 51 aren't included. Is that correct?

24 A Yeah, that's correct.

25 Q So, when you provided Mr. Cunningham with the draft

1 language for the market quotation process, you did not  
2 provide him with the list of exposures or the list of  
3 positions for which market quotations were going to be  
4 sought, did you?

5 A No, I did not.

6 Q And did you at any time on September 15, 2008 tell Mr.  
7 Cunningham how many positions QVT was seeking market  
8 quotations?

9 MR. REGAN: Objection. Calls for privileged  
10 communication. I think the Court has ruled that -- she said  
11 there's a --

12 THE COURT: Come on up. All right, we're going to  
13 take a few minutes to discuss the point that's being raised  
14 by Mr. Regan. Rather than having you all leave, we're going  
15 to leave. So, everybody can stay here. And if I could ask  
16 counsel to meet with me in the conference room -- we'll be  
17 back as soon as we can.

18 (Break)

19 THE COURT: Okay, thank you, everybody, for your  
20 patience. Ms. Sawyer, perhaps you could -- I don't know if  
21 you want to ask the question that you left off with or if  
22 you want to ask a different question.

23 MS. SAWYER: I think I'm going to withdraw that  
24 question and ask some different questions.

25 THE COURT: Okay.

1 Q Mr. Regan on your direct examination talked to you  
2 about some of the conversations that you'd had with counsel  
3 on September 15th regarding the market quotation process.

4 Do you recall that?

5 A I do recall that.

6 Q And I believe you testified that you spoke to Mr.  
7 Cunningham on September 15, 2008. Correct?

8 A Yes. I recall speaking with Mr. Cunningham.

9 Q And he was an attorney at Allen & Overy at the time,  
10 right?

11 A He was an attorney at Allen & Overy at the time, yes,  
12 that's correct.

13 Q And I'd like you to, if you can, without revealing the  
14 substance of any advice he gave you, identify the general  
15 topics that you discussed with Mr. Cunningham.

16 A Okay. I think we discussed generally the market  
17 quotation process and the fact that we would be sending out  
18 market quotations.

19 Q Did you talk with Mr. Cunningham about the time in  
20 which QVT should go out to the market with its market  
21 quotation requests?

22 A I don't recall whether I discussed that with Mr.  
23 Cunningham or not.

24 Q Did you discuss with Mr. Cunningham the time as of  
25 which the quotations should be received under the market

1 quotation process?

2 A I don't recall whether I discussed that with Mr.  
3 Cunningham or not.

4 Q Did you discuss with Mr. Cunningham the length of time  
5 that the dealers should have or would have under the market  
6 quotation process?

7 A I do not recall whether we discussed that or not.

8 Q I'd like you to look at -- just give me one minute --  
9 Claimant's Exhibit 2126, which is in that packet that Mr.  
10 Regan had given to you.

11 A Okay.

12 Q And this is -- before we were looking at the bottom  
13 email, which is your email to Mr. Cunningham at 10:54 a.m.  
14 on September 15, 2008. Do you see that?

15 A I do see that.

16 Q And then this is Mr. Cunningham's response at 3:11 p.m.  
17 Do you see that?

18 A I do see that.

19 Q And had you spoken to Mr. Cunningham between 10:54 a.m.  
20 and 3:11 on Monday September 15, 2008?

21 A I don't recall but I don't believe so.

22 Q Did you speak to Mr. Cunningham before 10:54 a.m. on  
23 Monday September 15, 2008?

24 A I don't recall whether it was before 10:54, but looking  
25 at the correspondence it would appear to me that it was. I

1 do recall that it was in the morning. That's my only  
2 memory.

3 Q Okay. And Mr. Cunningham's response on Claimant's  
4 Exhibit 2126 to your email is "Looks okay. Don't spend a  
5 lot of time on this." Do you see that?

6 A I do see that.

7 Q And he's referring to that you shouldn't spend a lot of  
8 time on drafting a market quotation request. Is that  
9 correct?

10 A I believe that's what he's referring to. That was the  
11 attachment to the email I sent to him.

12 Q That QVT should get that request out, right?

13 A I just know that it says don't spend a lot of time on  
14 this. It doesn't say to get it out; it says to not spend a  
15 lot of time on the form of the market quotation.

16 Q And that's what you understood him to be communicating  
17 at that time?

18 A I don't recall any particular understanding of this  
19 email at the time. I just know what it says now when I read  
20 it.

21 MS. SAWYER: Your Honor, may I have just a moment?

22 THE COURT: Sure.

23 Q Could we go back to Claimant's Exhibit 2115, which is  
24 the 105409 email to Mr. Cunningham and the attachment that  
25 we were looking at?

1 A Okay.

2 Q Now, this attachment that was sent to Mr. Cunningham at  
3 10:54 a.m. on Plaintiff's Exhibit 2115, Mr. Gold was also  
4 sending this draft language to others in the marketplace,  
5 wasn't he?

6 A I don't recall whether Mr. Gold was sending this  
7 language to others in the marketplace or not.

8 Q You don't recall whether -- that Mr. Gold sent this  
9 language to colleagues at DB to get their advice?

10 A I don't recall that.

11 Q And you don't recall discussing that with Mr. Gold?

12 A No, I remember sitting in Mr. Gold's office and  
13 drafting this language together. That's what I recall of  
14 this.

15 Q Not on the trading floor but in Mr. Gold's office?

16 A That's correct, it was in Mr. Gold's office, not on the  
17 trading floor.

18 Q And I believe you testified yesterday there were  
19 offices around the trading floor that people would use,  
20 correct?

21 A That's correct. And Mr. Gold's office is one of those  
22 offices that were on the trading floor.

23 Q Right. I'd like you to look at Claimant's -- sorry, I  
24 apologize -- Claimant's Exhibit 2117, which is in Mr.  
25 Regan's package.

1 A All right.

2 Q Are you there?

3 A Yes.

4 Q I hope I have the right number. And this is the email  
5 from you to Mr. Metter, that then Mr. Metter forwards on to  
6 Ms. Boot at WilmerHale at 12:28 p.m. on September 15, 2008,  
7 correct?

8 A Yes, that appears to be correct.

9 Q And the draft language at the bottom that gets  
10 forwarded along, that's the draft language that you put  
11 together with Mr. Gold?

12 A This language is different than the draft language that  
13 I put together with Mr. Gold that was shown on the  
14 spreadsheet that you previously showed me.

15 Q It's revised language from the spreadsheet that we  
16 looked at a few minutes ago, correct?

17 A That's correct. Some of the language is similar and  
18 some is different.

19 Q And the changes from the language we were looking at in  
20 the spreadsheet that was sent to Mr. Cunningham, were those  
21 changes made in consultation with Mr. Gold?

22 A I don't recall whether they were made in consultation  
23 with Mr. Gold. I would say that -- I know from some of the  
24 other emails we've looked at that this language was  
25 circulated to Mr. Gold eventually. So in that sense, yes,

1 in consultation -- but this appears to be language that I  
2 wrote from the spreadsheet that we have done together.

3 Q And was there any input from counsel in the revisions  
4 from the spreadsheet we looked at to this language?

5 A I don't recall.

6 Q And you're sending this language to Ms. Boot for her  
7 comment, correct?

8 A Correct.

9 Q And was there a conversation with Ms. Boot before you  
10 sent over this language?

11 A I don't recall whether there was a conversation before.  
12 I believe there was a conversation at some point. I think  
13 that conversation occurred after this initial language but I  
14 don't actually recall. I just remember the fact of a  
15 conversation.

16 Q And you remember there being one conversation?

17 A It might've been multiple conversations.

18 Q And approximately how long did you spend speaking with  
19 Ms. Boot?

20 A I -- it was not an hour; it was shorter than that. It  
21 was probably somewhere between 10 and 20 minutes. And I  
22 don't recall whether it was one conversation or more than  
23 one conversation.

24 Q And your conversation with Mr. Cunningham that you  
25 recall happening in the morning of September 15, 2008,

1 approximately how long was that conversation?

2 A It was a similar length. 20 minutes probably would be  
3 my guess.

4 Q And when you spoke with Ms. Boot, what topics did you  
5 discuss? Again, generally, not revealing any substance of  
6 the advice.

7 A I only recall speaking about the form of the market  
8 quotation -- the market quotation language.

9 Q So you only remember speaking with her about the draft  
10 language to be sent to the dealers?

11 A That's correct.

12 Q Do you recall whether you spoke with Ms. Boot about the  
13 timing at which QVT should go out to the market to solicit  
14 quotations?

15 A I don't recall speaking with her...

16 Q And do you recall talking with Ms. Boot about the time  
17 as of which the quotations were to be received?

18 A I don't recall speaking with her...

19 Q And do you recall speaking with Ms. Boot about the --

20 THE COURT: Can I ask for a clarification of what  
21 your answer means?

22 MR. BRUMM: Sure.

23 THE COURT: Does it mean you don't recall one way  
24 or the other? Or you don't -- as you're sitting here today,  
25 you don't believe that you did discuss it with her?

1 MR. BRUMM: Sure, no, I think I was a little  
2 clearer when I was responding with regard to Mr. Cunningham.  
3 It's the former. I don't recall one way or another.

4 THE COURT: One way or the other. Thank you.

5 MR. BRUMM: Whether we discussed it. Thank you  
6 for --

7 THE COURT: Sure.

8 MR. BRUMM: -- that clarification.

9 Q Do you recall discussing with... Okay. So, we just  
10 want to make clear -- when you spoke with Mr. Cunningham,  
11 you did not discuss the timing issues that I asked you  
12 about? The timing as of which to go out to the market and  
13 the timing as of which the quotations should be received?

14 A No. I thought when I spoke about Mr. Cunningham I was  
15 quite clear that I don't recall one way or another whether  
16 that topic was discussed or not.

17 Q And it's the same testimony for Ms. Boot. You don't  
18 recall one way or another whether those topics were  
19 discussed?

20 A That's correct.

21 Q And so looking at Claim -- now I'd like you to look at  
22 Claimant's Exhibit 2118, which, hopefully, is maybe the next  
23 one in your pile. And this is a -- it looks like it's a  
24 response from Ms. Boot to your request to review at 103. Do  
25 you see that?

1 A I do see that.

2 Q And if you look at the top email from Ms. Boot, it has  
3 language that looks like she's providing to you for  
4 inclusion in a market quotation request. Do you see that?

5 A Yes. This is the email from Jeanette to Adam Metter,  
6 and she is -- I believe you're correct -- including...  
7 That's why I take this to be -- language to be included in  
8 the market quotation request.

9 Q And she writes, "Please provide market quotations as of  
10 4 o'clock p.m. New York time." Do you see that?

11 A I do see that.

12 Q And if you look back at Claimant's Exhibit 2117, which  
13 is the language that you sent Mr. Metter to Ms. Boot, that  
14 language isn't included?

15 A That's correct.

16 Q So, where did the 4 o'clock time come from in Ms.  
17 Boot's email?

18 A It came from her. I mean, she proposed the language.

19 Q Okay. And did you discuss that language with her? Her  
20 proposal that the market quotation should be as of 4  
21 o'clock?

22 A As I told you a few minutes ago, I don't recall whether  
23 we discussed that or not.

24 Q But you believe that she is the one who came up with  
25 the time as of which the quotation should be, correct?

1 A I don't know that she came up with the time. I think  
2 she did provide the first language that indicated that there  
3 would be a time. But I don't agree that she chose the time.  
4 I mean, we would not have had Ms. Boot choose a time for us.

5 Q But that's the time that QVT did, in fact, use for  
6 their market quotation, was 4 o'clock?

7 A That's correct.

8 Q And that was the time suggested by Ms. Boot, correct?

9 A I don't know if it was suggested by her. I think  
10 you're correct that the first time that the language appears  
11 that says as of 4 p.m. is in the draft language that she  
12 sends back to us, but I don't know that -- certainly I don't  
13 think that she suggested the time. We would've picked the  
14 time.

15 Q QVT would've picked the time?

16 A Correct.

17 Q And when QVT picked the time as of which the quotations  
18 were to be -- as of, that selection was made without  
19 consultation with counsel, correct?

20 A I don't know that that's the case.

21 Q You just don't know one way or the other?

22 A I don't know. She proposed language that said as of 4  
23 p.m. That may have been after a phone call. There was a  
24 phone call certainly. So, I don't know whether to say it  
25 was... I think your question was whether it was made in

1 consultation with counsel. So, I don't... We picked the  
2 time. Certainly, the language first appears in her email  
3 back to us.

4 MS. SAWYER: Your Honor, may I --

5 A There may have consultation with her on that point;  
6 there may not have been. I just don't recall.

7 MS. SAWYER: May I have just another moment? I  
8 apologize.

9 THE COURT: Sure.

10 Q And in your consultations with Ms. Boot regarding the  
11 market quotation process, did you tell her the number of  
12 trades in the portfolio?

13 MR. REGAN: Objection, Your Honor. I don't know  
14 how that goes to any of the time issues that are within the  
15 scope of the issue we've been talking about.

16 THE COURT: I thought we had resolved this  
17 question.

18 MS. SAWYER: I thought we had, too.

19 MR. REGAN: In what way? I'm not sure...

20 THE COURT: In the way that we resolved it.

21 (Laughter)

22 MR. REGAN: I'm not sure what that resolution was  
23 then. Was it that that question's fair game?

24 THE COURT: I certainly believe that that's the  
25 way that we had resolved it. And that that was within the

1 parameters of the overall resolution of this issue.

2 MR. TRACEY: May I be heard, Your Honor?

3 THE COURT: Sure. Why don't you two talk to each  
4 other for a moment, okay?

5 (Pause)

6 THE COURT: Aren't you glad you don't practice  
7 law? Thank you for your patience. Okay, do we have a  
8 resolution of the narrow issue?

9 MS. SAWYER: I think I'm going to withdraw the  
10 question. I think I'm going to try asking some other  
11 questions.

12 THE COURT: Okay.

13 MS. SAWYER: And see where we go from there.

14 THE COURT: Very good.

15 Q So, Mr. Brumm, QVT picked the time as of which the  
16 market quotations were to be obtained, correct?

17 A We did.

18 Q And QVT picked 4 o'clock, correct?

19 A QVT requested that market quotations be given as of 4  
20 p.m.

21 Q And QVT -- you also discussed that time, 4 o'clock,  
22 with Ms. Boot, correct?

23 A I don't recall whether we discussed that time or not  
24 with Ms. Boot. What I do see is that the language saying as  
25 of 4 p.m. first appears in an email from her back to us.

1 Q And so she endorsed the 4 p.m. in her email back to you  
2 by incorporating it into that email, correct?

3 A I don't know whether she endorsed it or not. I just  
4 know that she sent back an email saying "as of 4:00 PM",  
5 whereas prior to that, if you look at the drafts, there's no  
6 "as of" date, even though I think that's required by the  
7 terms of market quotation.

8 Q And -- sorry. You didn't send Ms. Boot any  
9 spreadsheets of the positions that QVT had, did you?

10 A I don't recall doing so.

11 Q And you didn't send Ms. Boot any summary of the  
12 liquidity concerns that QVT had regarding the positions it  
13 held, did you?

14 MR. REGAN: Objection, Your Honor. The liquidity  
15 concerns that QVT had about the portfolio seem to be outside  
16 the scope at the time of the waiver.

17 THE COURT: Okay, yeah, that's sustained.

18 Q Did -- you didn't tell Ms. Boot that QVT was concerned  
19 that there was certain trades in the portfolio for which  
20 market quotations might be difficult to obtain, did you?

21 MR. REGAN: Same objection.

22 THE COURT: I'm going to allow you to answer that  
23 question.

24 A Okay, may I hear the question again, please?

25 Q You didn't tell Ms. Boot that QVT was concerned that

1 there were certain trades in the portfolio for which market  
2 quotations might be difficult to obtain, did you?

3 A I don't recall discussing that with Ms. Boot.

4 Q You don't recall one way or the other, or you don't  
5 recall discussing it, period?

6 A I don't recall one way or another.

7 Q And you didn't tell Ms. Boot that QVT was concerned,  
8 because some of the transactions, Lehman was the only  
9 market-maker in those trades?

10 MR. REGAN: Objection, Your Honor. Well outside  
11 of the timing issue.

12 THE COURT: That's sustained.

13 Q If you could look at Claimant's Exhibit 2122, which is  
14 in that packet from Mr. Regan.

15 A Yep.

16 Q This is the spreadsheet where you're -- or I mean,  
17 sorry, this is the email where you're sending Ms. Boot the  
18 draft language in the standalone document, do you see that?

19 A Yes, I do see that.

20 Q And your attachment, which is entitled BWIC/OWIC  
21 Request for Market Quotations, that you drafted, correct?

22 A I believe, yes, that's a document that I generated.

23 Q And that document, the attachment to Claimant's Exhibit  
24 2122 contains the language that we were just discussing,  
25 "Please provide market quotations as of 4:00 PM New York

1 time", correct?

2 A Yes, I see where it says that on the --

3 Q And so at this time, the 4:00 time was settled, is that  
4 fair?

5 A Yes, that is fair.

6 Q And if you could look at Claimant's Exhibit 2123, do  
7 you see that?

8 A Okay.

9 Q This is the response to the one we were just looking  
10 at, Claimant's Exhibit 2122, where Ms. Boot responds, "Looks  
11 good." Do you see that?

12 A I do see that.

13 Q And so as of 1:35 on September 15th, 2008, Ms. Boot has  
14 signed off on the language, would you agree with that?

15 A Yes, I believe that's what it indicates.

16 Q And did you have any discussions with Ms. Boot at this  
17 time about it getting late in the day, and whether the 4:00  
18 time still made sense?

19 A I don't recall any such discussions.

20 Q Do you recall ever discussing it out with Ms. Boot as  
21 the time continued to pass on the afternoon of September  
22 15th 2008, as to whether the 4:00 time still made sense.

23 A I do not recall having such discussion with Ms. Boot.

24 Q Why was QVT speaking with two different sets of lawyers  
25 about the market quotation process?

1 A I don't recall precisely. But I do recall that it was  
2 difficult to get in touch with Mr. Cunningham on the morning  
3 of September 15th, 2008. He's a well-known derivatives  
4 lawyer, and I know too from the Claimant's exhibits in this  
5 packet we looked at that he only got back to me on the draft  
6 I sent him at shortly before 11 after 3:00. So I presume  
7 that we decided we needed someone else to look at it who  
8 could maybe look at it a little more quickly, so we could  
9 get it out.

10 Q Did QVT -- you testified that QVT made the decision to  
11 seek the quotes as of 4:00 on its own, correct?

12 A I think I testified that we made the decision as to the  
13 time. But I think it's clear looking at the document that  
14 the first time that an "as of" time appears at all, and that  
15 time is 4:00 PM in the draft, is in the communication back  
16 from Ms. Boot.

17 Q I believe you testified that the reason that is, is  
18 because you told Ms. Boot that time, correct?

19 A I think what I testified was that we selected the 4:00  
20 PM time.

21 Q And did QVT also select the 3:00 time to -- in which to  
22 go out to the market to seek the market quotations?

23 A I don't think we selected a 3:00 time. We didn't say,  
24 "We'll send it out at 3:00." We tried to send it out as  
25 accurately as we could, as we completed the two work

1 streams. One was the language, which was done shortly  
2 before 2:00. And the other was the compiling of the  
3 position list to which the language was attached, which was  
4 done later -- I'm sorry.

5 Q And did you consult with counsel as 3:00 rolled around  
6 to see whether that would be sufficient time under the  
7 market quotation process to get the dealers to respond?

8 A I don't recall doing so, I don't recall further  
9 conversations with counsel. I did receive from Mr.  
10 Cunningham his view that it looked good to send out at 3:00  
11 PM.

12 Q But you don't recall having such discussions with  
13 counsel, correct?

14 A I don't recall having further discussions with counsel,  
15 that's right.

16 Q And you don't recall exactly who sent out the market  
17 quotation requests, do you?

18 A I believe they were sent out by Joel, and Tom Knox.

19 Q And you didn't send any out, did you?

20 A I don't believe I did.

21 Q And when QVT sent out its market quotation requests on  
22 September 15th, it was asking for actionable quotations,  
23 right?

24 A That's correct. It was asking for actionable  
25 quotations.

1 Q I'd like you to look at Joint Exhibit 60. 6-0.

2 A 6-0, yes.

3 Q And this is an email from Mr. Knox to himself on  
4 Monday, September 15th 2008 at 3:20, with the RE line EM CBS  
5 OWIC, do you see that?

6 A I do see that.

7 Q And this was -- Mr. Knox was the emerging markets  
8 trader at QVT in 2008, right?

9 A That's correct. He was the emerging markets trader at  
10 QVT in 2008, or the main emerging markets trader, I guess I  
11 would say.

12 Q And we can look at the spreadsheet, which is attached.

13 A Okay.

14 Q We'll have to look at it on the screen. The first tab  
15 has instructions, do you see that?

16 A I do see that.

17 Q And that's the language that you drafted, correct?

18 A Sure, can you scroll down a little further? Yes, that  
19 appears to be the language that I drafted.

20 Q And Mr. Knox is sending to -- sending out QVT's market  
21 quotation request in Joint Exhibit 60 to dealers, isn't he?

22 A He's sending it specifically to a dealer, to Ian Alban,  
23 I guess, is the top email.

24 Q And if you look at his bottom email, Mr. Knox, he says,  
25 "We would appreciate your responses by 4:00 PM today," do

1 you see that?

2 A I do see that.

3 Q And in fact, Mr. Knox is requesting that the dealers  
4 respond by 4:00 PM on Monday, September 15th, 2008, to the  
5 market quotation request, correct?

6 A I guess I'm a little confused by the form of this  
7 email. You're saying this thing that he sent himself was  
8 then forwarded to -- I guess that's what happened?

9 Q Well, we don't know. Mr. Knox would know, but our  
10 understanding is that Mr. Knox probably blind copied the  
11 dealers, and then forwarded one to someone else.

12 A I see, I see, understood.

13 Q If you disagree, that's --

14 A I have no basis to disagree with that characterization,  
15 I was just trying to understand.

16 Q But you see Mr. Knox's language in the cover email,  
17 where he says, "We would appreciate your responses by 4:00  
18 PM today."

19 A I do see that language.

20 Q And so Mr. Knox, in sending out his request for the  
21 market quotation, he's giving the dealers 40 minutes to  
22 respond, correct?

23 A I think that's not correct. He says he would  
24 appreciate the responses by 4:00 PM today. It doesn't say  
25 that 4:00 PM is a deadline, and I think the instructions

1 clearly indicated that it was not.

2 Q And you don't recall any review or analysis being done  
3 at QVT to determine whether 40 minutes would be sufficient  
4 time for the dealers to review and respond to QVT's market  
5 quotation request, do you?

6 A No, I don't recall any review or analysis being done  
7 around the issue of what was an appropriate amount of time.  
8 Certainly not as to whether 40 minutes was an appropriate  
9 amount of time. But we didn't believe that we were putting  
10 people under that type of a deadline.

11 Q You don't recall any analysis being done as to whether  
12 an hour for these transactions would be sufficient time to  
13 ask the dealer to respond, do you?

14 A No, I do not.

15 Q And all told, QVT only received the requisite three  
16 quotations for 12 of the transactions, correct?

17 A That's correct.

18 Q And you're not aware of any follow-up that QVT did with  
19 the dealers, trying to get additional market quotations, are  
20 you?

21 A Well, no, that's not correct. We did follow up, in  
22 terms of calling dealers. I think I testified this morning  
23 about how we made calls to the dealers before we sent these  
24 things, but we also made calls to the dealers afterwards to  
25 find out what was going on, whether we would be getting

1 these back, and what they would look like, and that sort of  
2 thing.

3 Q And you didn't make any of these calls, though, did  
4 you?

5 A I did make at least one call, that I recall.

6 Q And that call was to try to get market quotation  
7 responses that you made?

8 A Yes, that call was to one of our salespeople. It was a  
9 conversation with one of our sales people as to what was  
10 going on, were we going to get back a response from them.

11 Q And who was it?

12 A That was a sales person at Deutsche Bank called Shondra  
13 Metzler, M-E-T-Z-L-E-R. She was an emerging market  
14 salesperson.

15 Q And other than that one call that you remembered to Ms.  
16 Metzler, the emerging market salesperson, did you make any  
17 additional calls to follow up on QVT's market quotation  
18 requests?

19 A I don't recall any others.

20 Q And did you have any concern at QVT that since the  
21 market quotation process only yielded the three requisite  
22 quotes on 12 transactions, that the process could be  
23 challenged as not being reasonable, or in good faith?

24 A No, I didn't have any particular concerns about that.  
25 I just felt that the process had failed. I mean, what I

1 heard consistently was that the dealers were just saying  
2 that they were not going to be able to provide very much,  
3 that they were overcome by the volume of requests that they  
4 had received, that in any event, they had more pressing  
5 matters to deal with, including marking their own positions,  
6 and dealing with their own risk, so we shouldn't expect back  
7 much, and they'd send us something when they could. That  
8 was the gist of what we heard, and specifically what I  
9 remember from the conversation.

10 Q But you only had one conversation, correct?

11 A What I recall is there were multiple conversations  
12 going on. Like this, you saw the trading flow that we sit  
13 on, a lot of information was relayed. But yes, the only  
14 conversation that I had personally, that I remember, was  
15 with her.

16 Q And following Lehman's bankruptcy, QVT tried to reduce  
17 its risk, sit that correct?

18 A Yes, that is correct.

19 Q And to the extent QVT had been left unheeded by the  
20 termination of the Lehman transactions, QVT sought to enter  
21 into new hedges where appropriate, right?

22 A We did enter into certain new CDS transactions, which  
23 were hedges for CDS that had -- sorry, hedges -- well, I  
24 don't even recall if they were all hedges, frankly. They  
25 were -- we entered into new CDS transactions to replace

1 certain of the CDS transactions. And yes, I believe certain  
2 of them were, as hedges, for positions that we had specific  
3 bond positions, typically.

4 Q And QVT looked at its portfolio following Lehman's  
5 bankruptcy, and decided that there were certain positions  
6 that it wanted to replace, correct?

7 A That's correct.

8 Q I'd like you to look at Exhibit 5169, which is in the  
9 binder.

10 A Okay.

11 Q And this is an email chain at the top, from Mr. Fu to  
12 the managing members on Tuesday, September 16th, 2008 at  
13 noon, do you see that?

14 A I do see that.

15 Q And he's forwarding along an email chain between Ms.  
16 Feng and Ms. Blanco at Lehman, correct?

17 A That's correct.

18 Q And if you look at the email at the bottom, from Ms.  
19 Feng to Ms. Blanco at 10:47 AM on Tuesday, September 16th,  
20 Ms. Feng writes, "Hi Patricia, I see there's an MTM movement  
21 from EOB 9/12 to 9/15 for plus 12 million in QVT, and 1.3  
22 million in Quintessence. Are you able to make this call?"  
23 Do you see that?

24 A I do see that.

25 Q And MTM commonly refers to market-to-market, right?

1 A That's what I would take it to mean here, correct.

2 Q Okay. And Ms. Feng here was following our daily  
3 process for determining map margin, correct?

4 A Yes.

5 MR. REGAN: Objection, Your Honor. Mr. Brumm is  
6 nowhere referenced in this document.

7 THE COURT: Why don't you lay some foundation?

8 Q Mr. Brumm, are you a recipient of emails that go to  
9 managingmembers@QVT.com?

10 A Yes, I am a managing member of QVT, and I am a member  
11 of that mailbox.

12 q And as is Mr. Gold, and Mr. Chu, correct?

13 A That's correct, and Mr. Fu as well.

14 Q And so you would have received this email that Mr. Fu  
15 forwarded to the managingmembers@QVT.com on Tuesday,  
16 September 16th at noon, correct?

17 A Yes, I would have received that.

18 Q And that would have been just about an hour after LBSF  
19 responded and said that they were frozen and wouldn't be  
20 making any evaluations. Do you see that?

21 A I do see that's about an hour difference between the  
22 top email and the second email.

23 Q And Ms. Feng, in determining the MTM movement from EOB  
24 9/12 to 9/15, she was following her daily process in  
25 connection with margin, wasn't she?

1 A Yes, I believe that she was.

2 Q I'd like you to look at Exhibit 5544.

3 A 5544, okay.

4 Q These are entitled responses and objections of QVT to  
5 LBSF's second set of interrogatories. Do you see that?

6 A I do see that.

7 Q And if you go to the last page of this exhibit, 5544,  
8 you have verified these responses, do you see that?

9 A I do see that.

10 Q And you understood when you -- you understood that you  
11 were verifying them under oath, correct?

12 A I did understand that.

13 Q And you understood that to verify these, you believe  
14 that the information contained herein would be true, to the  
15 best of your knowledge, information, and belief, right?

16 A That's correct. That's what's stated right above my  
17 signature.

18 Q So if you could turn to Interrogatory Number 23, which  
19 is on Page 17? This interrogator asks about Exhibit 5169,  
20 and it says, "Is it your contention that your employee,  
21 Kelly Feng, was not authorized to send the margin call she  
22 sent to Lehman on September 16th, 2008, related to the  
23 Lehman transactions, as reflected in QVT fund 02442869? Do  
24 you see where I'm at?

25 A Yes, I see where you are.

1 Q And if you look down to the response in the section,  
2 the paragraph that starts "Ms. Feng", do you see that?

3 A I do see that.

4 Q It says that Ms. Feng was a very junior clerical  
5 employee of QVT with no authority to issue margin calls  
6 without approval from more senior management of QVT, do you  
7 see that?

8 A I do see that.

9 Q And then it continues, it says the email reflected at  
10 QT fund 02442869 is not a margin call based solely on the  
11 change in value of the Lehman transactions, as estimated on  
12 September 15th, 2008, but relates to QVT's efforts to  
13 recover from Lehman the initial margin that QVT had posted  
14 with Lehman. Do you see that?

15 A I do see that.

16 Q And you believe that to be a true statement?

17 A I do.

18 Q And even though -- if you look back at Exhibit 5169,  
19 Ms. Feng makes no reference to initial margin, does she?

20 A I'm sorry, I'll just look back. No.

21 Q And she says -- I'm sorry.

22 A I'm sorry, just say, I wouldn't necessarily expect her  
23 to. As I stated, I think in my direct testimony, the margin  
24 called under -- margin, we're trying to agree, a number that  
25 will be called, one always speaks in terms of one single net

1 number. So if you -- let's say you were to unwind, let's  
2 say it were just an ordinary course, and you unwind a  
3 transaction, and you get the initial margin back. There's  
4 no separate payment of the initial margin. It just gets  
5 wrapped in to the calculation, "Oh, I'm holding their much  
6 money, I, the dealer, I see this much market value, so I'm  
7 releasing it back to them."

8 Q But the only way this would be an accurate net number  
9 is if Lehman returned all of the initial margin to QVT,  
10 correct?

11 A Yes, I think that's correct.

12 Q And this doesn't explicitly lay that out for that  
13 Lehman, does it?

14 A It does not.

15 Q And the reason it would be an accurate margin call,  
16 netting out the intimal margin, is because there was  
17 actually a \$5 million market-to-market movement in the  
18 portfolio in Lehman's favor from September 12th to September  
19 15th, correct?

20 A That's what I believe that the numbers that Kelly was  
21 looking at showed, yes.

22 Q You testified on direct examination about the working -  
23 - the meetings that happened the weekends of September 21st,  
24 20th, 21st, and September 27th and 28th. Do you recall  
25 that?

1 A I do.

2 Q And you testified that these sessions lasted for five  
3 to six hours, do you recall that testimony?

4 A Yes, I do.

5 Q And was that one session that lasted that long, or were  
6 there multiple sessions that each lasted that long?

7 A There were multiple sessions that east lasted  
8 approximately that long. People would come in, different  
9 times, and around the same time, and they -- most of them  
10 were there for some portion of the entire period, depending  
11 on how much work they had to do.

12 Q But these weren't meetings where everyone was sitting,  
13 working on the same project for five or six hours, were  
14 they?

15 A No, they were working on their individual tabs of the  
16 spreadsheet.

17 Q And isn't it true that you actually don't recall  
18 whether there was any in-person meeting about creating the  
19 claims' calculation values?

20 A I recall that we all sat around that trading desk that  
21 you saw in our usual positions, and that there was  
22 discussion. So in that sense, there was an in-person  
23 meeting. I don't recall -- we definitely didn't go into a  
24 conference room and hold an in-person meeting.

25 Q So you were all in the office, but not necessarily

1 meeting or discussing the situation with each other.

2 A I remember that there were a lot of discussions. We  
3 weren't all sitting quietly, working on our own stuff.

4 There were period where we worked on our own stuff, there  
5 were periods where we asked questions of others as to how --  
6 what they thought of some valuation situation we were  
7 considering. There were periods where we talked to how we  
8 would compile all the stuff together.

9 Q And these weren't things that started at a specific  
10 time or ended at a specific time, were there?

11 A No, it was more general, like, "I'll try to be in by  
12 11," or, "I'll see you around midday."

13 Q People had their own work they needed to do, and were  
14 in the office, isn't that fair?

15 A I think it's more than that. I mean, yes, they had  
16 responsibility for individual things, but we all wanted to  
17 be there at the same time. Like, no one was coming in at  
18 say, 7:00 PM when everyone else left, just to do their own  
19 thing. We all wanted to work together, so we could discuss  
20 issues as they arose.

21 Q And isn't it true that the process of calculating the  
22 claim values was really done over email, with people sending  
23 in their final versions of the transactions that they were  
24 valuing.

25 A Well, I won't say that that's how the process was done.

1 That was the end step, was for each person to send in their  
2 claim values.

3 Q And so that was the final step, for each person to  
4 email in their final claim values that they had calculated,  
5 correct?

6 A Yeah, I mean, when we say emailed in, they emailed an  
7 attachment, as a spreadsheet that they had been working on,  
8 and then those were all complied.

9 Q And each -- and I think you testified on direct that  
10 the portfolio was divided up for different traders to  
11 handle, correct?

12 A That's correct. It was divided up, basically based on  
13 their what -- the positions that they had traded, they were  
14 given to value.

15 Q And QVT didn't give the traders any written  
16 instructions or guidelines about how to approach the  
17 valuation of their transactions, did they?

18 A No, we didn't.

19 Q The traders were told to use their best judgment to  
20 come up with the valuations of the transaction, right?

21 A They were told that, but I think there were more  
22 specific directions that were given. I laid out in my  
23 direct --

24 Q And --

25 A Sorry, that I laid out in my direct. Sorry, I'm trying

1 to get closer to the mic.

2 Q But it ultimately came down to the individual trader's  
3 judgment as to how to value their transactions, correct?

4 A Yes. For certainly a broad array of the transactions.  
5 There were obviously the market quotation ones, there were  
6 the replacement trades. There it didn't really come down to  
7 individual trader judgment, but yes, certainly for the  
8 others, where they had to look at the different sources  
9 available, what came back from the market quotation process,  
10 but that didn't rise to the level of actual market  
11 quotation, the unsolicited broker runs, and the Markit data.

12 Q And so the traders were -- setting aside the market  
13 quotation response ones, those 12 trades, and the actual  
14 replacement trades, on all the other traders, the traders  
15 were using their judgment and also told to look at data  
16 beyond September 15th if they believed that was appropriate,  
17 correct?

18 A Right, and they were told that they needed to determine  
19 what the replacement value was on the early termination  
20 date, September 15th, but that in doing so, they should look  
21 at when we could have actually replaced these trades, and in  
22 particular, make sure that they thought that they were using  
23 data that accurately reflected our replacement costs.

24 Q But there were no guidelines or discussions making that  
25 clear that you were suppose-d-about what the traders were to

1 do. Again, it was just the traders' judgment as looking at  
2 the data available to them over that week, what they  
3 believed was most appropriate, correct?

4 A It's not correct to say that there was no discussion.  
5 There was discussion of exactly what I've laid out, that we  
6 discussed the fact that we had to look for the best market  
7 data, and that in doing so, we couldn't just take one  
8 source, or just take Markit or something for September 15th,  
9 because it might not really be a good representation of  
10 where you could have traded, even on that date.

11 I think as I said in my direct, it's really a  
12 collection of dealer opinions. And I think there was plenty  
13 of reason to believe on September 15th that it wasn't the  
14 highest thing on -- highest priority on dealers' minds. I  
15 mean, we couldn't even get back market quotations. So we  
16 considered that issue, when we looked at the levels. And a  
17 lot of it is related to the liquidity of the position  
18 itself. I think things that are more liquid, it was easier  
19 to find market data from, more likely that it would be an  
20 accurate representation.

21 Q So to understand how the trader approached valuing each  
22 of their transactions, we'd have to actually ask the traders  
23 how they evaluated the data available to them, correct?

24 A Well, I think there were some rules, which I've laid  
25 out for you. But in order to understand the individual

1 judgments that were made around individual positions, you  
2 would have to ask the trader, yes.

3 Q And again, you didn't have primary responsibility for  
4 valuing any of the transactions, correct?

5 A I did not have primary responsibility for valuing any  
6 of the transactions at issue in this case.

7 Q I'd like you to look at Exhibit 5202.

8 A Okay.

9 Q We had talked about earlier that there were -- when you  
10 sent investor communication, there were often -- that Mr.  
11 Gold would draft the commentary, and then the other managing  
12 members would review and comment on it. Is that fair?

13 A Yes. Sometimes there were other people that would  
14 draft sections of it in advance of him, people from our  
15 investor relations area. But often he would write the core  
16 commentary himself, the initial draft, and circulate it to  
17 the managing members, and other senior professionals, and  
18 QVT for their comment.

19 Q If you look at the cover email, this Exhibit 5202, it's  
20 an email from you to Mr. Gold, and others, on Tuesday,  
21 September 23rd, 2008 at 4:44, and the subject is estimated  
22 returns of feeder funds draft. Do you see that?

23 A I do see that.

24 Q And these appear to be comments that you sent on a  
25 draft investor update that says Draft September 23, do you

1 see that?

2 A I do see that.

3 Q And these are examples of the types of comments that  
4 you and other gave to Mr. Gold on the commentary he'd  
5 prepared, correct?

6 A Yes, I think that's correct. I mean, you just said you  
7 and others, and yes, I would point out that I think some of  
8 these are certainly not my comments. I can't tell from  
9 looking at which are my comments.

10 Q So you may have collected comments from others, put  
11 them into one document, and sent it alone, is that fair?

12 A I think it's more likely that there was a draft with  
13 comments in it that I was sent, and that I then commented on  
14 that. I think that's probably what happened.

15 Q And you can't tell looking at this which were your  
16 comments, and which are the comments of others?

17 A I cannot.

18 Q And if you could turn to the page at the bottom marked  
19 QVT Fund 014414369.

20 A Okay.

21 Q And there's deleted language about middle of the page,  
22 over to the side, and it's very small. I think if we blow  
23 it up, it'll make it easier for you to see. Do you see  
24 that?

25 A I'm sorry, I'm on 369?

1 Q Yes.

2 A In the middle.

3 Q Yes.

4 A Sorry, as of the -- okay, sorry, yes, it's a bubble in  
5 the middle of the paper.

6 Q Yes, do you see that?

7 A I think actually the paper one is easier to read.

8 Q Okay, whichever is easier for you. And it says -- and  
9 this is a suggested deletion, is that correct?

10 A Yes.

11 Q Okay. And it says as of the close of Monday, September  
12 15th, the QVT fund's month to date performance was  
13 approximately, I think it's -0.30 percent to -0.40 percent,  
14 depending on the feeder, taking into account Lehman-related  
15 losses and loss of positions as of that date, essentially  
16 unchanged with the month to date performance as of the  
17 preceding Friday. Do you see that?

18 A I do see that.

19 Q And was that accurate in September 2008, that the month  
20 to date performance was essentially unchanged from Friday,  
21 September 12th to Monday, September 15th?

22 A I don't know if that was accurate, without going back  
23 and looking in our PNL systems. I mean, it was deleted  
24 here. I don't know if it was deleted was because we didn't  
25 have a level of -- or whoever the reviewer was, perhaps it

1 was me, perhaps it was another one, didn't have a level of  
2 confidence in that number, or whether it was deleted for  
3 other reasons, so --

4 Q You just don't know?

5 A I don't know. I mean, I don't know without looking at  
6 the PNL system.

7 Q And do you have any reelection as to the movement in  
8 QVT's month to date performance over the Lehman weekend?

9 A Month to date performance over the Lehman weekend. I  
10 mean, I think we looked earlier at a document that set out  
11 performance as of September 11th, and then I don't remember  
12 what performance was on September 12th. And I think  
13 performance on September 15th, I don't think was very good.  
14 But I don't recall precisely what it was.

15 Q You didn't look at any -- you don't know?

16 A I don't know.

17 Q I'd like you to look at Exhibit 5466.

18 A Okay.

19 Q And this is an update on QVT estimated performance on  
20 Tuesday, September 23rd, 2008, at 9:13 PM. DO you see that?

21 A I do see that.

22 Q And this is an investor update being sent by QVT to its  
23 investors on September 23rd, 2008, correct?

24 A Correct.

25 Q And you were involved in the drafting of this update,

1 correct?

2 A I believe I was, yes.

3 Q And this was drafted by Mr. Gold, right?

4 A Certainly sections of it I believe were drafted by Mr.  
5 Gold, yes.

6 Q And starting --

7 A The more commentary-type sections, if you will.

8 Q And starting at the top, it has the estimated returns  
9 of feeder funds, right?

10 A Yes, it does have the estimated returns of feeder funds  
11 at the top.

12 Q And this again would have been mid-month numbers  
13 generated from QVT's Tyche system, right?

14 A Yes, these are -- I would call the intra-month numbers.  
15 It's not really mid-month, because it's not the middle of  
16 the month, it's through September 22nd.

17 Q And toward the bottom of the first page is a section, a  
18 heading, Update on Counterparty Exposures, do you see that?

19 A I do see that.

20 Q And Mr. Gold starts by saying, "In talking about  
21 counterparty exposures, it's important to highlight an  
22 important distinction." Do you see that?

23 A I see that.

24 Q And in this paragraph, he's making a distinction  
25 between exposure and replacement risk, do you see that?

1 A I do see that he's making that distinction.

2 Q And Mr. Gold say, "By exposure I mean" the amount of  
3 the fund's equity directly at risk to the failure of a  
4 counterparty's credit", correct?

5 A I see that.

6 Q And then he describes what replacement risk is, which  
7 is the amount of money which may be lost, or a lost  
8 opportunity to profit, because a position, repo, CDS, et  
9 cetera, is terminated as a result of the failure of the  
10 counterparty's credit, and can only be replaced at a higher  
11 cost. Do you see that?

12 A I do see that.

13 Q And Mr. Gold goes on to put this distinction in context  
14 by talking about the Lehman default. Do you see that toward  
15 the bottom of the page?

16 A I see that.

17 Q And he says, "At the time of the Lehman Brothers  
18 failure, the QVT funds had no net exposure in the sense that  
19 they owed CDS on Lehman, large enough to offset the initial  
20 margin and derivatives contracts, equity and prime brokerage  
21 in repo, and any other credit exposures to Lehman." Do you  
22 see that?

23 A I do see that.

24 Q And that's very similar to the language that we saw in  
25 the September 11th, 2008 update to the investors, correct?

1 A It's similar, but I would say that he better defines  
2 replacement risk here, really loan the lines that I defined  
3 it for you when I showed you that document.

4 MR. REGAN: Your Honor, I have to object. I think  
5 Lehman took the position in its opening statement that CDS  
6 on Lehman were a separate bet from the CDS that QVT had with  
7 Lehman as a counterparty.

8 MS. SAWYER: I'm not sure what the objection is.

9 THE COURT: What's the objection?

10 MR. REGAN: Relevance. If the CDS that had Lehman  
11 had the reference entity are a completely separate bet that  
12 has Lehman as the counterparty, why is anything about CDS  
13 that Lehman had -- that QVT had with Lehman as the reference  
14 entity --

15 THE COURT: Ms. Sawyer is asking Mr. Brumm  
16 questions about this document, so I'm going to let her  
17 continue to do that. Okay, go ahead.

18 Q So I was specifically talking about the language at the  
19 time of the Lehman Brothers failure, the QVT funds had no  
20 net exposure, in the sense that they owned CBS on Lehman.  
21 Do you see that sentence?

22 A I do see that sentence.

23 Q And that sentence about there being no net exposure, in  
24 the sense that they owned CDS on Lehman large enough to  
25 offset these other losses, that's very similar to the

1 language that we saw on the September 11th, 2008 investor  
2 update, correct?

3 A I don't know if that language is similar. I'd have to  
4 go back and compare it. I guess I was -- I thought you were  
5 asking if the replacement risk (indiscernible) was similar.  
6 I was trying to define for you how it's similar, but  
7 different.

8 Q Okay. I want to go on in this document to the next  
9 sentence. It says, "However, the QVT funds nevertheless  
10 lost money, and they lost the opportunities to profit that  
11 they would have had, if Lehman had not failed, because CDS  
12 and repo contractors facing Lehman had to be terminated, and  
13 could only be replaced at a greater cost." Do you see that?

14 A I do see that.

15 Q And so is it true that QVT funds only lost money in  
16 connection with the replacements that they did?

17 A I'm sorry, your question, is it true that we only lost  
18 money in connection with the replacements that we did?

19 Q Right.

20 A The replacement CDS?

21 Q Yes.

22 A No, I would not say that's the only way we lost money  
23 in September of 2008.

24 Q It's QVT's position that QVT has lost money because  
25 they lost the opportunities to profit on trades that they

1 did not do, correct?

2 A Sorry, can you repeat that question?

3 THE COURT: I think you should ask a different  
4 question, okay?

5 Q It's QVT's position in this case that it should be  
6 entitled to recover for losses for trades that they did not  
7 enter into, correct?

8 A It's QVT's position in this case that we're not limited  
9 to claiming, with respect to terminated transactions, only  
10 if we look, executed replacement transactions, yes. I mean,  
11 that's a category of terminated transactions. But we did  
12 not replace any transaction we terminated.

13 Q And QVT's calculation statement primarily is seeking to  
14 recover for these lost profit opportunities, isn't that  
15 correct?

16 A I don't know that it's primarily seeking to recover for  
17 lost profit opportunities. I mean, I think there are  
18 terminated transactions that were not replaced, that one  
19 could think of that way. But I think that the PCDS and  
20 CARB, which as you're aware, are the major classes of  
21 transaction at issue in this case, by value, I think that  
22 certainly they became much more valuable instantaneously on  
23 September 15th, as a result of Lehman's default, because it  
24 indicated a whole new world order, and set of rules for  
25 financials. So I guess those could be considered a lost

1 opportunity to profit.

2 Q And QVT made no effort to replace either the PCDS  
3 transactions -- any of the PCDS transactions or CARB  
4 transitions, did it?

5 A No, that's not true. As we, we tried to find whether  
6 other people were trading PCDS, and I think depending on the  
7 price, if they have been trading it, it would have had  
8 interest in actually replacing it.

9 Q QVT didn't respond to the Merrill Lynch solicitation  
10 seeking to replace any of the PCDS it had, correct?

11 A That's correct. We were not aware of the Merrill Lynch  
12 solicitation. We received a blast Bloomberg, we all  
13 received thousand -- sorry, by which I mean we received a  
14 Bloomberg message indicating that Merrill had interest in  
15 offering PCDS, I think it was in early October. And we were  
16 not aware that we had received that Bloomberg message.

17 The way Bloomberg messages work is that  
18 salespeople at sell-side firms have lists of people at buy-  
19 side firms. They can obviously just send you a message  
20 directly, but they typically blast out their messages to  
21 their whole coverage list. And so consequentially, it's  
22 sort of like an inbox on steroids or something. You receive  
23 thousands of Bloomberg messages a day, if you're active in  
24 the OTC market.

25 So you have to be looking for something to know

1 that it's there, and that's why people typically also, for  
2 buy-side firms that they think may have interest, they would  
3 either pick up the telephone and call them, or send them a  
4 chat, or something like that, so do something individualized  
5 to get their attention. Say, hey, you know, we're going to  
6 do this. That never happened, with respect to the Merrill  
7 Lynch offers that you're talking about, as far as I'm aware.

8 Q So QVT wasn't looking for PCDS offers, at the time that  
9 came in?

10 A QVT was -- I don't know if at the time, we were looking  
11 for PCDS offers. I just recall my partner Arthur Chu, who  
12 had been the trader on PCDS, I recall him trying to contact  
13 other dealers, and find out whether they would be willing to  
14 offer a PDS.

15 Q And you weren't the PCDS trader, correct?

16 A I was not the PCDS trader.

17 Q And when you talked about what the others, about what  
18 we knew, about this Merrill Lynch offering, you're only  
19 talking about what you knew, correct?

20 A I don't think anyone knew about the Merrill Lynch  
21 offering at QVT, based on my knowledge, correct.

22 Q But you can only speak to what you know, correct?

23 A I think that's fair. I can only speak to what I know.  
24 I didn't know about it, and I don't recall anyone else  
25 mentioning it.

1 Q So I want to look at -- back to Claimant's Exhibit  
2 5466, at the top of the second page, Mr. Gold provides an  
3 example to illustrate replacement risk, do you see that?

4 And he says --

5 A Oh, sorry, the following example, you're looking at  
6 that language?

7 Q Yes.

8 A Yes, okay.

9 Q So following example illustrates replacement risk. The  
10 funds held certain short positions in Argentine debt,  
11 reverse repoed from Lehman, as well as long CDS on Argentine  
12 debt facing Lehman, both of which terminated as a result of  
13 the Lehman bankruptcy, causing the funds to become  
14 temporarily un-hedged, i.e., long. Over the next two days,  
15 credit spreads on Argentine debt widened by upwards of 500  
16 basis points, inflicting a loss on the remaining under-  
17 hedged position. Do you see that?

18 A I do see that.

19 Q So Mr. Gold's example, the fact that the credit spreads  
20 widened after Lehman's bankruptcy is where the loss comes  
21 from, correct?

22 A I think when he says "the next two days", he's probably  
23 referring to the day of Lehman's bankruptcy and the  
24 following day.

25 Q But you have to look beyond the day of Lehman's

1 bankruptcy in order to determine the loss in Mr. Gold's  
2 example, correct?

3 A In Mr. Gold's example, yes. He references two dates.

4 Q And then if you look at the next section, it's a  
5 section entitled Lehman Brothers, do you see that?

6 A Sure. May I just clarify something on the last point?

7 Q Yes.

8 A So I just want to be clear, because I think it's not  
9 clearly stated here that he refers to the remaining under-  
10 hedged positions. This is an example where you have  
11 something on the other side of the CDS, your long, some  
12 other Argentinian debt, or something. So that's where  
13 you're taking your losses, is what he's trying to say.  
14 That's what the reference to under-hedged positions means.

15 Q So if you look at the Lehman Brothers' section?

16 A Okay.

17 Q The section sentence in this section says, "Lost profit  
18 opportunities may also count as damages. That is, it is  
19 possible to be damaged even if one doesn't actually lose  
20 money, if one would have made money, but for the  
21 counterparty's default. Do you see that?

22 A I do, I do see that.

23 Q And that's exactly what QVT is claiming in this case,  
24 that their lost profit opportunities, money that QVT would  
25 have made but for the counterparty's default, correct?

1 A Yes, I think that is correct. We're claiming that but  
2 for Lehman's default, we would have been able to collect on  
3 these valuable contracts, as of the date that they were  
4 terminating, on September 15th, because they became more  
5 valuable as of that date.

6 Q In the calculation statement that QVT submitted, it's  
7 seeking to recover these replacement risks that Mr. Gold's  
8 taking about in the September 23rd update, correct?

9 A Well, I mean, as you just said, his example of  
10 replacement risk includes subsequently losses. Until you --  
11 if you have an under-hedged position, until you re-hedge the  
12 position, you can continue to experience profit and loss  
13 swings that you wouldn't have experienced before that. So  
14 that's what he's talking about in replacement risk. It's to  
15 a different point in time, the point where you re-hedge, or  
16 you get rid of the position that you needed the hedge for.  
17 I think what we're claiming is for the replacement value as  
18 of the early termination date.

19 And yes, that may be a lost profit opportunity in  
20 the sense that, imagine a position that you're adequately  
21 collateralized on, and didn't move -- well, then you didn't  
22 -- there was no lost profit opportunity. But if it moved a  
23 lot, in part as a result of the dealers filing, then that  
24 was a lost profit opportunity. It became more valuable on  
25 the date that the dealer filed, and that you terminated.

1 Q I don't think that -- I'm not sure you answered my  
2 question. My question is, Mr. Gold's talking about  
3 replacement risks in the September 23rd update.

4 A Okay.

5 Q Those are the claim -- that replacement risk is what  
6 QVT is attempting to recover for in its claim in this case,  
7 correct?

8 A Well, no, I don't think so, and I do think I just  
9 answered that, but I'll try again. The replacement risk  
10 that Mr. Gold is talking about is the need to replace a CDS  
11 for a portion that is specifically hedged by that CDS. And  
12 his example includes multiple days.

13 And he's basically saying that until you re-hedge  
14 that Argentinian long bond position that you're long, or  
15 sell that Argentinian long bond position, that you face  
16 replacement risk, that is, that you need to -- whatever  
17 level you eventually replace the CDS at, or sell the long  
18 Argentinian bond at instead, your -- if it continues to  
19 widen, you're going to continue to take losses But I don't  
20 think that he's -- I don't think when you say, "That's what  
21 we're seeking to recover", we're not seeking to recover for  
22 post-early termination date losses. I know that we've used  
23 some data, post-early termination date, and that's why I  
24 imagine the confusion arises.

25 Q If you could look at the next paragraph, under the

1 Lehman Brothers Section, it says because -- he starts with  
2 "Because our other certain of our portfolio level hedges,"  
3 do you see that?

4 A Okay, sure, let me just read that. Okay.

5 Q And if you look towards the end of this paragraph, it  
6 talks about the replacement risk again, on suddenly un-  
7 hedged positions. Do you see that?

8 A I do see that.

9 Q And it says, "However, because credit spreads widened  
10 much more significantly over the following two days, we  
11 experienced losses as we replaced additional hedges in  
12 unfavorable market conditions. Do you see that?

13 A I see that.

14 Q And that's referring to the two days after Lehman's  
15 bankruptcy, right?

16 A I think that's actually referring to the -- yes, I  
17 think that's referring to September 16 and 17, to be clear,  
18 yes, those following two days.

19 Q And so QVT experienced losses that actually replaced  
20 the additional hedges in the unfavorable market conditions,  
21 correct?

22 A Yes, I believe we did experience some losses as we did  
23 that.

24 Q And then there's also the discussion of the replacement  
25 risk associated with the increased market-to-market on those

1 positions that did not get replaced following Lehman's  
2 bankruptcy, correct?

3 A I'm sorry, where are you looking at?

4 Q I'm just asking you a question, not reading from the  
5 document.

6 A Sorry, can you repeat the question for me, then.

7 Q Well, there's a discussion in the sentence before, it  
8 says there's an initial market-to-market replacement risk on  
9 suddenly unhedged positions, correct? Do you see where I'm  
10 at?

11 A I do see where you're at, yes.

12 Q And that's referring to a risk associated with the  
13 differences in the market-to-market values as the spreads  
14 widened over the two days following Lehman's bankruptcy on  
15 position that were not replaced, correct?

16 A I think that's not correct. I think that this first  
17 sentence is talking about the day of Lehman's bankruptcy  
18 filing, and it's saying that portfolio-level hedges  
19 compensated us for your Lehman-related exposure -- exposure  
20 as distinct from replacement risk, as it was discussed on  
21 the previous page, and for initial market-to-market losses  
22 on suddenly unhedged positions, that it compensated for  
23 those two things, is what it's saying.

24 Q The CDS compensated for those two things, right.

25 A No, sorry, our portfolio-level hedges, which include

1 but are not limited to CDS, and Lehman, other investment  
2 banks. There was a variety of -- there were a variety of  
3 instruments in our portfolio-level hedge. It was a very big  
4 book of risk.

5 Q Now, you drafted this paragraph of the commentary,  
6 correct?

7 A I know that I commented on it. I don't know if I  
8 drafted it.

9 Q You worked with Mr. Gold on it, for sure, correct?

10 A I think he produced an initial draft and I commented on  
11 it, yes.

12 Q And I just want to make clear, so the replacement risks  
13 in this paragraph, are those replacement risks being sought  
14 -- is recovery for these types of replacement risks being  
15 sought in the calculation statements (indiscernible) by QVT?

16 A So, I think certainly initial market-to-market  
17 replacement risks on suddenly unhedged positions, yes,  
18 that's being sought in this, because that is the jump to  
19 default effect, and it's -- we are seeking the replacement  
20 value, the fact that net -- because we had a mostly long  
21 book of CDS, that it became more valuable on the day that  
22 Lehman filed. So yes, we're absolutely seeing that, and  
23 we're seeking it regardless of whether we replaced those  
24 transactions, or whether we didn't.

25 Q And you're seeking it based on data not just from 9/15,

1 but also looking at data from throughout the week of  
2 Lehman's bankruptcy, correct?

3 A For certain of the calculations, that is correct. We  
4 looked at data after 9/15, but what we were trying to do was  
5 to establish what we thought was the actual value that we  
6 could have replaced those positions at as of the early  
7 termination date.

8 Q And again, that would have been a judgment call made by  
9 each individual trader valuing that transaction.

10 A That's correct.

11 THE COURT: So, Ms. Sawyer, Mr. Brumm has been up  
12 there for a long time. What do you think about how much  
13 longer you have?

14 MS. SAWYER: I think I am honestly, close to the  
15 end.

16 THE COURT: Okay.

17 MS. SAWYER: Maybe if we took a quick break, I  
18 could be quite efficient when we came back. But I also see  
19 what time it is, so --

20 THE COURT: Right, so it's almost 5:30. We could  
21 take a five-minute break, and then --

22 MS. SAWYER: I mean, we could -- I could also just  
23 step out and confer. I mean, I have questions, but if I  
24 conferred with Mr. Tambe for a few moments, I think we could  
25 be --

1 THE COURT: Sure. You okay staying?

2 MR. BRUMM: I'm happy to stay, yes. I'm fine,  
3 thank you for asking.

4 THE COURT: I'm just going to stay, if anyone  
5 wants to leave, that's fine.

6 (Recess)

7 THE COURT: Okay, home stretch.

8 MS. SAWYER: Yes, absolutely. Mr. Brumm, if you  
9 could look at Exhibit 5466, which is the September 23rd  
10 investor update?

11 A Okay.

12 Q And if you could got to the second page, the Lehman  
13 Brothers section that we're looking at?

14 A Okay.

15 Q And I'm looking at the last sentence of that section.  
16 And it says, "I believe that a majority of our month to date  
17 losses would have been sustained, even if the QVT funds had  
18 had no direct relationship to Lehman, simply because of the  
19 market conditions on which (indiscernible) was valued." You  
20 see that?

21 A I'm sorry, I don't see it at the moment. It's 5466,  
22 and I'm in the Lehman Brothers section --

23 Q The last sentence of that section.

24 A Okay, I see it now. (indiscernible), thank you.

25 Q You see that sentence?

1 A Sure, just give me a moment. I do see that, yes.

2 Q And you believe that's an accurate statement, when it's  
3 sent to QVT's investors in September of 2008, correct?

4 MR. REGAN: Objection, speculation. It's a  
5 statement of belief. I'm not sure what the question is  
6 actually asking.

7 THE COURT: The question was if he believed it to  
8 be accurate.

9 MR. REGAN: Did he believe the belief to be  
10 accurate?

11 Q This is a statement that's being sent out to  
12 investors. Do you believe that to be an accurate statement  
13 that was -- you believe that to be an accurate statement  
14 that was sent to your investors in September of 2008, don't  
15 you?

16 A At the time it was sent, in September of 2008, I  
17 believed it was an accurate statement, yes.

18 Q Mr. Regan asked you some questions about the side  
19 pocket, and your interests in the Lehman side pocket, do you  
20 remember that?

21 A I do recall that.

22 Q And you had explained to Mr. Regan that the insiders'  
23 interests in the Lehman side pocket have been increasing.

24 A I explained that they have increased, yes.

25 Q And if you could look at Exhibit 5339?

1 A Okay.

2 Q It's in the second, in this page --

3 A 5339, yep, okay. Okay.

4 Q Sorry, are you looking at -- there's a spreadsheet in  
5 here that I think we printed out in your binder that says  
6 custodian's 2008 direct -- no, it's up on the screen.

7 A I see it on the screen, I do not see it in my binder.

8 Q It's not in your binder?

9 A In my binder it says produced in native format.

10 Q Okay, and if you turn to the next page, there's still  
11 nothing (indiscernible) --

12 A Yes, it has the metadata for the file.

13 Q All right, so we'll just look at what's on the screen,  
14 then.

15 A That's okay.

16 Q So this was a sheet that was produced to us,  
17 summarizing the interests of certain individuals in the  
18 Lehman side pocket as of 2008 and 2015, do you see that?

19 A I do see that.

20 THE COURT: Can I interrupt you to ask a technical  
21 question? So if this isn't in the binder, where is it going  
22 to live in the record?

23 MS. SAWYER: We have USB -- well, it's not in the  
24 binder, apparently.

25 MR. TAMBE: (indiscernible) the blue sheet, it's

1 in the binder.

2 MS. SAWYER: Is it?

3 MR. TAMBE: (indiscernible) the blue sheet, it's  
4 in the binder.

5 THE COURT: Is it after the blue sheet? Oh, it  
6 is.

7 MR. BRUMM: Oh, I'm sorry, there's a blue sheet.  
8 You're correct.

9 THE COURT: It's after the blue sheet. Thank you.  
10 Mr. Tambe, you've earned your keep.

11 MR. TAMBE: Is that on the record?

12 Q All right, great. So this is a spreadsheet that was  
13 produced by QVT indicating what certain custodians'  
14 interests were in the side pocket in 2008 and 2015, do you  
15 see that?

16 A I do see that.

17 Q And it indicates, in 2015, the direct interests of the  
18 custodian identified is 5.93 percent, do you see that?

19 A I do see that.

20 Q And then at 6.43, if you include the indirect interests  
21 of those custodians, do you see that?

22 A I do see that.

23 Q And you, Yi Cen, Arthur Chu, Daniel Collins, Tracy Fu,  
24 Dan Gold, Fatemeh -- apologize, I'm --

25 A Sadeghi-Nejad.

1 Q Okay, Julian Sale and Joel Wollman are identified as  
2 the custodians, do you see that?

3 A And family members, yes, I see that, at Line 11.

4 Q And family members. So what is the percentage of that  
5 group of individuals now in the Lehman side pocket, what do  
6 they own?

7 A I don't know what it is now.

8 Q But it's more than 6.43 percent?

9 A It's likely more than 6.43 percent.

10 Q And are there records somewhere that indicate what it  
11 is?

12 A Yes, there are records. It's a complex calculation to  
13 form, for the indirect positions in particular. So, but  
14 there is an ability to produce that. It was produced in  
15 2015.

16 THE COURT: Can I clarify? You asked Mr. Brumm  
17 about the indirect only, not the--the 2015 indirect, not the  
18 2015 direct?

19 MS. SAWYER: Yes.

20 THE COURT: Okay.

21 Q But my understanding is, maybe you can explain to me,  
22 that I believe that the direct is -- well, what are those  
23 direct and indirect columns?

24 A Sure. Let me try to explain. So the direct ownership  
25 is stated here in Row 9 as the actual ownership in S25, an

1 economic ownership through an allocation to deferred fee  
2 arrangements. So that -- it's essentially our pro rata  
3 interest, as it was in 2010 of the -- sorry, in 2008 of the  
4 whole fund, when the side pocket was created. You'll see  
5 that it's increased slightly over time. That, as I  
6 understand it, is due to certain tax and fee considerations,  
7 but you'll see that it's increased fairly minimally, I mean,  
8 it's similar level.

9 There was no indirect ownership in 2008. The  
10 indirect ownership reflects some of the complexities I was  
11 trying to address at the start of the cross-examination, in  
12 terms of our ownership of the main fund having increased,  
13 there are certain other funds, too, that have also purchased  
14 interest in what we call the combined special investment  
15 fund, which is the fund that today houses S25, and a number  
16 of really, all of our other old special investments that  
17 have not been wound up already.

18 Q What is your direct and indirect interest in the Lehman  
19 side pocket today?

20 A I would have to go back and look at the source data.  
21 I'm not a majority, or 50 percent of those numbers, but I'm  
22 some percentage of them.

23 Q Can you give us an approximation as to what your  
24 percentage is today?

25 A I'm reluctant to do so, without looking at actual

1 numbers. But --

2 Q What percentage of the 2.3 billion of the assets under  
3 management at QVT today are owned by insiders?

4 A Well, I don't know the number -- I can't give you a  
5 percentage for the 2.3 billion, because I don't know that.  
6 What we call our continuing funds, which are the funds that  
7 continue to actively trade and put on new position, that's  
8 roughly 1.6 billion of the UM, I believe. And of that, the  
9 insiders, defined as -- I think that would be the custodians  
10 and others here on this list, because it includes our former  
11 partners, are a little bit over 40 percent, current.

12 MS. SAWYER: Okay. Can I have just one moment,  
13 Your Honor?

14 THE COURT: Sure.

15 MS. SAWYER: I have no further questions.

16 THE COURT: Thank you.

17 MR. REGAN: No redirect, Your Honor.

18 THE COURT: Okay, very good. Thank you very much,  
19 Mr. Brumm, you can step down.

20 MR. BRUMM: Thank you, Your Honor.

21 THE COURT: So I think we wanted to take a couple  
22 of minutes to reflect on the record everyone's  
23 understandings of certain discussion that were had today,  
24 with respect to privilege issues. Ms. Sawyer, did you want  
25 to do that? Did you want to give a general statement of --

1 MS. SAWYER: I can give it a shot.

2 THE COURT: What's that?

3 MS. SAWYER: I'll give it a shot.

4 THE COURT: And then Mr. Tracey can comment, and I  
5 can -- to the extent that you don't agree, I can give you  
6 what I think the proper characterization of it is.

7 MS. SAWYER: So I believe that in connection with  
8 discussion we've had about certain positions taken in this  
9 litigation, that the Court determined that certain documents  
10 needed to be produced in redacted form, to allow limited  
11 inquiry into certain areas of potentially privileged  
12 communication in those areas related to the timing  
13 associated with the market quotation process.

14 And specifically it was the timing at which QVT  
15 went into the market to request market quotations, and the  
16 timing as of which the quotes were to be obtained, and the  
17 drafting of the language referring to as of the date and  
18 time the market quotations would be obtained. And QVT  
19 produced certain documents, that have been submitted as  
20 Claimant's Exhibit 2122 through 2128.

21 MR. REGAN: 2112.

22 THE COURT: 2112.

23 MS. SAWYER: 2112 through 2128.

24 THE COURT: Right.

25 MS. SAWYER: QVT has submitted those exhibits, and

1 questioning occurred in connection with those.

2 THE COURT: Right, and additional redactions --  
3 and redactions were made to some, but perhaps not all those  
4 exhibits, to narrowly reflect the scope of the at-issue  
5 waiver that you've described with respect to the timing  
6 issues associated with the market quotation process.

7 MR. TRACEY: Yes, and I agree with the description  
8 of the scope of the limited waiver. I would only point out  
9 that the Court has ruled, I believe, that that is not a  
10 general waiver.

11 THE COURT: Correct.

12 MR. TRACEY: And that there has been no waiver of  
13 any advice requested or given that's outside the scope of  
14 the timing issues as described by Ms. Sawyer, and  
15 specifically not on the general issues surrounding the ISDA  
16 or the market quotation process.

17 THE COURT: Correct. And we're going to, to the  
18 extent that additional witnesses are questioned on these  
19 same topics or similar topics, we're going to attempt to  
20 keep to the same out of bounds line, if you will, that we  
21 managed to get through today.

22 MR. TRACEY: And I, if I could just add -- and I  
23 think this is right, but everyone will correct me if I'm  
24 wrong, I think we're limiting the questioning to the QVT  
25 side of the communications.

1 THE COURT: Yes.

2 MR. TRACEY: And we're not veering into taking  
3 testimony from lawyers.

4 THE COURT: Right.

5 MS. SAWYER: Agreed.

6 THE COURT: No additional discovery, no testimony  
7 of lawyers, or anything related to that, or -- I'll leave it  
8 at that. Okay, so should we talk about tomorrow?

9 MR. TRACEY: So we plan to put -- sorry, were you  
10 going to say something?

11 MS. SAWYER: No, I'm just standing here.

12 MR. TRACEY: We're going to call Mr. Wollman first  
13 to authenticate the --

14 THE COURT: Spreadsheet.

15 MR. TRACEY: -- the spreadsheet.

16 THE COURT: Okay.

17 MR. TRACEY: And then we will put Mr. Chu on the  
18 stand for his testimony.

19 THE COURT: And do you expect that that will take  
20 most of the day tomorrow?

21 MR. TRACEY: I believe that between the two of  
22 them, they will take the full day.

23 THE COURT: Okay.

24 MR. TAMBE: And not just for your direct, or are  
25 you building in cross-examination?

1 MR. TAMBE: Well, my understanding is there's  
2 going to be no cross-emanation of Mr. Wollman.

3 MR. TAMBE: We'll just reserve our objections and  
4 we'll deal with that when we examine Mr. Wollman.

5 THE COURT: I'm looking at Ms. Sawyer for a sign  
6 off on that concept. Well, I'm -- in all seriousness, to  
7 the extent that there are questions about the  
8 authentication, then --

9 MR. TRACEY: I have no problem with it. I have no  
10 problem with it.

11 MS. SAWYER: We're reserving -- we're not doing a  
12 full cross-examination.

13 THE COURT: No, it's not a full cross-examination,  
14 it's only in connection with if they believe that your  
15 questions don't establish a complete basis, then instead of  
16 just objecting, and you want to put some questions, that's  
17 what we're going to do, correct, right?

18 MS. SAWYER: Right.

19 MR. TRACEY: That's fine, that's fine.

20 THE COURT: Okay, so there's that. So then we go  
21 back to the other question of you were just talking about  
22 the direct, and not getting to cross tomorrow?

23 MR. TRACEY: I think we may get to cross, but not  
24 a lot.

25 THE COURT: Okay. All right, so we're starting at

1 10:00, and we'll just take it from there. All right?

2 MR. TRACEY: Okay.

3 THE COURT: I do have the folks coming in at 9:00  
4 tomorrow morning, so if you could tidy as much as you can, I  
5 would appreciate it. And I'll have --

6 MR. TRACEY: Are we planning on --

7 THE COURT: I'm sorry?

8 MR. TRACEY: Are we planning on 10:00, Your Honor?

9 THE COURT: 10:00, yeah. And I'm 99 percent sure I'll have  
10 those folks out by 9:45. But you can come in and set up,  
11 and get ready. All right, thank you very much.

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14 (Whereupon these proceedings were concluded at 5:50 PM)

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C E R T I F I C A T I O N

I, Sonya Ledanski Hyde, certified that the foregoing  
transcript is a true and accurate record of the proceedings.

Sonya

Ledanski Hyde

Digitally signed by Sonya Ledanski Hyde  
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Date: February 3, 2017